Shoreline Master Program UPDATE

City of Bellevue Planning Commission

Draft SMP Public Comments

June 15, 2011

Originally published on June 15, 2011 - Revised and re-published on June 23, 2011.

Donna Lemke
2016 W. Lk Samm. Pkwy SE
Bellevue, WA 98008
Lemke19@comcast.net

We heard tonight from staff that a house next to a stream that is an existing structure can be torn down and rebuilt on the footprint without triggering any requirements, extra plantings etc., tearing out of bulkheads or docks and hiring of consultants at exorbitant fees. We hope that this exemption for an existing house will remain valid in the CAO. What if the foundation needs some repair? We also want staff, commissioners, etc of Bellevue to strongly encourage King County to clean the outlet of Lake Sammamish to lower lake levels. 1.1 1.2

1. **Please be aware that the state has Lake Sammamish on plan to regulate the phosphorous levels in the lake. There is a certain level which cannot be exceeded without triggering expanded run-off control. Please Google this document if you are not aware of it. It must be honored.** 1.3
2. **Also why 50 ft instead of 35 ft which other municipalities have required? It seems like grabbing of private property.** 1.4

Please recognize that Lk. Samm's water levels fluctuate and that the high levels will wash out any vegetation that is planted, especially in the Bellevue Shoreline area. This adds phosphorous to the lake that would not be introduced if Lake levels were better controlled. 1.5

Also please understand how small an impact waterfront activity has on the lake. (.01% of the watershed) Concentrate on the real problem which is run off. Maintain the holding ponds, especially those feeding into Phantom Lake 1.6

Terry J. Lemke **2016 W. Lk Samm. Pkwy SE** **Bellevue, WA 98008** **Lemke19@comcast.net**	**The fact that the proposed regs are 250 pages is unworkable. No one is going to read through 350 pages. I heard that staff included referenced regulations and that contributes to the length.** **It is easier to write a lengthy document than to condense it but condense it we must if the people it is intended to regulate are to understand it and if the City of Bellevue is to be able to implement it.** **I would ask that the Planning Commission ask the staff to make a 20 page summary of key provisions**	**2.1**

Barbara Hancock **2644 W. Lk Samm Pkwy SE** **Bellevue, WA 98008** **bhoffice@comcast.net**	**Please stop spending tax payer's money on this Shoreline Plan. Just adopt Redmond's Plan**	**3.1**

Bud Norquist **372 W. Lk Samm Pkwy NE** **Bellevue, WA 98008** **ladyvey@aol.com (check email)**	**Heidi & Pat – Just wanted to comment that we noticed you must have listened to some of what all of us were saying over the months…. A few of the restrictions have eased and actually look "fair". (Lakey Norquist)**	**4.1**
	It appears that the lake level, which is a moving target needs to be fixed in stone (*30.57 NAVD = 27.0 NGVD). This is a very good standard. Going up to 31.8 NAVD will hurt many property owners that have to move the 50' set back 10 feet closer to their homes (Bud Norquist)	**4.2**

TO: BELLEVUE PLANNING COMMISSION

From: Bud Norquist, Addendum to our letter of 5/21/2011

1) **PROPOSED SMP WILL HAVE SERIOUS UNITENDED CONSEQUENCES BECAUSE OF CONFLICTS WITHIN THE PLAN.**
   a) **LAKE SAMMAMISH AND LAKE WASHINGTON HAVE VERY DIFFERENT LAKE LEVEL CONTROLS: FLOOD GATES AT LOCKS VS. MARYMOOR WIER CONTROL.**
   b) **REMOVAL OF BULKHEADS AND STABILIZATION MATERIAL ON LAKE SAMMAMISH WILL CAUSE MAJOR EROSION PROBLEMS AND WILL ALLOW BEACH MATERIAL TO SLUFF INTO THE LAKE.** 4.3
2) **THE WASHINGTON STATE DEPARTMENT OF ECOLOGY HAS SET GUIDE LINES THAT DO NOT TAKE INTO CONSIDERATION THE FLUCTUATING LAKE LEVELS ON LAKE SAMMAMISH. IF THIS DEPARTMENT WAS SERIOUS ABOUT THE "NO NET LOSS" SECTION OF THEIR AUGUST 2010 PUBLICATION THEY WOULD REQUIRE THE MARYMOOR WIER FLOOD PLAN BE MAINTAINED AS PROVIDED IN THE ORIGINAL CONSTRUCTION PLAN. I HAVE PERSONALY WALKED THE SLOUGH IN THE MARYMOOR FLOOD PLAIN AND FROM AN ENGINEERING STAND POINT HAVE FOUND THAT THE SLOUGH HYDRAULICS ARE BEING ALTERED BY MISMANAGEMENT OF THE WIER AREA. ECOLOGY GROUPS ARE BEING ALLOWED TO PLANT NATIVE TREES AND SHRUBS IN THE FLOOD PLAIN AREA. (SEE SIGN). THIS VEGETATION, WHILE WELL INTENDED, HAS REDUCED THE SAMMAMISH OUT FLOW CHANNEL TO LESS THAN 10 FEET. THE PLAIN WAS DESIGNED TO BE MORE THAN 100 FEET ACROSS IN THIS AREA. THE COUNTY SAYS THEY WILL REMOVE SOME OF THE GROWTH AND MOW THE GRASS ALONG THE HIGHWAY SIDE OF THE SLOUGH. THIS IS NOT ACCEPTABLE AND WILL NOT CORECT THE FLOW PROBLEMS. THIS LAKE LEVEL CONTROL DEVICE MUST BE FIXED BEFORE FURTHER ERROSION AND DAMAGE IS CAUSED TO THE LAKE SHORE.** 4.4
3) **I RECOMMEND THAT THE CITY OF BELLEVUE PROTECT THE PROPERTY OWNERS ON LAKE SAMMAMISH BY DEMANDING THAT THE ECOLOGY DEPT. OF WASHINGTON FIX THE WIER PROBLEM AND THAT UNTIL THIS IS DONE AND THE SAMMAMISH LAKE LEVEL IS MAINTAINED AT NO MORE THAN A 27 FOOT NGVD LEVEL, WHICH IS 30.6 NAVD. THE CITY IS SUMITTING A SMP PLAN USING THE 25 FOOT SET BACK GUIDE LINE. THE PLAN WILL BE AMMENDED WHEN WIER PROBLEM IS FIXED. USING A 32 FOOT NAVD IS A TOTAL INJUSTICE TO THE INTENT OF THE LEGISLATION.** 4.5
4) **THE WASH. DEPARTMENT OF ECOLOGY HAS SET A DEADLINE OF DECEMBER 2014 TO SUBMITT FINAL SMP GUIDELINES. THIS IS AMPLE TIME FOR THE WIER PROBLEMS TO BE RESOLVED AND THE LAKE LEVEL CONTROLS RE-ESTABLISHED.**

Bud Norquist

BUD NORQUIST

SBCE/ US NAVY CIVIL ENGINEER ASSIGNED TO WATERFRONT MAINTENANCE FOR 6 YEARS ACTIVE DUTY.

Bud Nordquist,	some of the serious unintended consequences will result from conflicts within the plan. For instance, a plan that fits shoreline activity on Lake Washington may not work for Lake Sammamish given that the former is controlled by government locks and the latter is controlled by a weir. Different problems cannot be solved by the same stroke of a pen. If logs are used on Lake Sammamish to stabilize the shoreline and prevent natural erosion, the result will be floating debris and littered shorelines. There are places near Marymoor farm where the outlet is currently only ten feet wide. Docks up and down the lake are under water. If the weir had been maintained as it was designed, the lake level would be stable. In 1999, well after the weir was constructed, the ordinary high water mark was 30 feet; the draft Shoreline Master Program puts the mark at 32 feet. The increased lake level puts far more shoreline property in jeopardy of being nonconforming as a result. He said he lives in a boathouse on the property originally owned by his parents. He said it has been remodeled several times over the years; his children will want to live there as well and remodel the home as they see fit. If the home were to be moved back 50 feet to match the neighbors on each side, the requirement to plant native vegetation and trees would kick in and the views of the lake would be blocked, all aimed at correcting a problem that does not exist.	**4.6** **4.7** **4.8** **4.9**

Brandt & LaVey Norquist

372 W. Lk. Sammamish Pkwy NE.
Bellevue, WA. 98008
425-747-2047

Mr. David Radabaugh **June 1, 2011**
Shoreline Planner
Department of Ecology
3190 160 Ave SE.
Bellevue, WA 98008

Subject: Lake Sammamish Shoreline Plan.. SMP

Dear Mr. Radabaugh

Thank you for spending a few minutes with me after the Bellevue City Planning Meeting on May 25th, 2011. During that meeting the City of Bellevue Planning Department spokesperson indicated that they had been working on the Lake Sammamish water level problems with other agencies. I had assumed that the Department of Ecology was also involved because lake level fluctuations are very critical to proper shoreline management. As I said during our conversation, I was shocked to hear that you were unaware of the problems at the Marymoor weir. If the weir is allowed to stay in a state of disrepair lake levels will rise.

If you are not aware, the weir at Marymoor was completed in 1964 by the Army Corps of Engineers, and modified in 1998 to improve passage for salmon. The floodplain transitional area directly below the weir, 200 ft wide x ¼ mile long, was designed so that proper outflow from the lake would occur throughout the year. The Army Corps of Engineers identifies this transition zone as the most important section of the Sammamish River and that it must be regularly maintained: mowed and clear of trees, brush & debris. 4.10

I have enclosed a few photos I took in April 2011 that show the current condition of the River. One photo on a Marymoor Park fence shows that local environmental groups are reestablishing native plants along the Sammamish River. This planting must stop. In addition, all existing bushes, shrubs, and trees in the transition area must be removed.

Unfortunately, during the past several decades, lack of proper maintenance of the transition zone has led to the growth of trees and brush that now impede the outflow, resulting in lake levels rising far beyond safe levels. Where historically the weir would control lake level fluctuations to no more than 2 ft per year, the lake is now regularly fluctuating 4 ft per year. This greater fluctuation is causing shoreline erosion and is degrading the ecological functions of the lake. More shoreline soil and sand is being eroded away during winter storms due to the abnormally high water levels. Only properties with retaining walls and bulkheads are

protected from this threat, though they too are at greater risk. Many more docks are being damaged or destroyed now too.

Under the new proposed Bellevue SMP, removing bulkheads would be disastrous for shorelines during winter storms, ... the shoreline will simply be washed away. Even if the shoreline is planted with additional trees and shrubs the shoreline cannot hold together under the more intense, higher wave action. The concept of anchored logs for shoreline stabilization will fail when waves rock the logs, leading to eventual erosion of the underlying substrate. 4.11

During this SMP process the City of Bellevue and the Department of Ecology have overlooked the loss of ecological function due to the increased annual lake level fluctuations of Lake Sammamish. Until such time as the Marymoor weir and floodplain transition area are repaired and assured of being properly maintained, one can only conclude that the existing 25 foot setback is not having a detrimental impact, in the aggregate, to the already degraded ecological function of the lake.

Attached you will find the letter written by 8 engineers who live on Lake Sammamish and who are very concerned about the current condition of the weir area. I have also attached my letter to the Bellevue Planning Commission expressing my concern with the disconnect between the timeframe for finishing the SMP and re-establishing lake equilibrium once the weir problem is corrected. Fixing the weir outflow problems will help insure NO NET LOSS.

The Washington State Department of Ecology must recognize that in order to insure stable ecological function of Lake Sammamish proper discharge across the weir needs to be re-establish and must be a <u>top priority</u> of King County, the Army Corps of Engineers, the Department of Fish and Wildlife, as well as the City of Bellevue and the other surrounding jurisdictional cities.

Respectfully submitted,

Brandt M Norquist

Brandt M. Norquist

Copies to : City of Bellevue Planning Commission; City of Sammamish;
Martin C. Nizlek, WSSA; City of Redmond; City of Issaquah

PLEASE
KEEP OUT
OF FENCED AREAS
We are reestablishing native plants along the Sammamish River to restore fish and wildlife habitat and water quality.
You can help by keeping pets and children out of the fenced areas, and by not letting your dogs dig into the river bank!

TO: BELLEVUE PLANNING COMMISSION

From: Bud Norquist, Addendum to our letter of 5/21/2011

1) **PROPOSED SMP WILL HAVE SERIOUS UNITENDED CONSEQUENCES BECAUSE OF CONFLICTS WITHIN THE PLAN.**
   a) **LAKE SAMMAMISH AND LAKE WASHINGTON HAVE VERY DIFFERENT LAKE LEVEL CONTROLS: FLOOD GATES AT LOCKS VS. MARYMOOR WIER CONTROL.**
   b) **REMOVAL OF BULKHEADS AND STABILIZATION MATERIAL ON LAKE SAMMAMISH WILL CAUSE MAJOR EROSION PROBLEMS AND WILL ALLOW BEACH MATERIAL TO SLUFF INTO THE LAKE.**

THE WASHINGTON STATE DEPARTMENT OF ECOLOGY HAS SET GUIDE LINES THAT DO NOT TAKE INTO CONSIDERATION THE FLUCTUATING LAKE LEVELS ON LAKE SAMMAMISH. IF THIS DEPARTMENT WAS SERIOUS ABOUT THE **"NO NET LOSS"** SECTION OF THEIR AUGUST 2010 PUBLICATION THEY WOULD REQUIRE THE MARYMOOR WIER FLOOD PLAIN BE MAINTAINED AS PROVIDED IN THE ORIGINAL CONSTRUCTION PLAN. I HAVE PERSONALY WALKED THE SLOUGH IN THE MARYMOOR FLOOD PLAIN AND FROM AN ENGINEERING STAND POINT HAVE FOUND THAT THE SLOUGH HYDRAULICS ARE BEING ALTERED BY MISMANAGEMENT OF THE WIER TRANSITION AREA. ECOLOGY GROUPS ARE BEING ALLOWED TO PLANT NATIVE TREES AND SHRUBS IN THE FLOOD PLAIN AREA. (SEE SIGN). THIS VEGETATION, WHILE WELL INTENDED, HAS REDUCED THE SAMMAMISH OUT FLOW CHANNEL TO LESS THAN 10 FEET. THE FLOOD PLAIN WAS DESIGNED TO BE 200 FEET ACROSS AND ¼ MILE LONG IN THIS AREA. THE COUNTY SAYS THEY WILL REMOVE SOME OF THE GROWTH AND MOW THE GRASS ALONG THE HIGHWAY SIDE OF THE SLOUGH. THEY SAID IT WOULD BE DIFFICULT TO CORRECT PROBLEMS ON THE MARYMOOR SIDE OF THE RIVER. THIS IS NOT ACCEPTABLE AND WILL NOT CORECT THE FLOW PROBLEMS. THIS LAKE LEVEL CONTROL WEIR MUST BE FIXED BEFORE FURTHER ERROSION AND DAMAGE IS CAUSED TO THE LAKE SHORE.

2) **THE CITY OF BELLEVUE MUST PROTECT THE PROPERTY OWNERS ON LAKE SAMMAMISH BY DEMANDING THAT THE ECOLOGY DEPT. OF WASHINGTON FIX THE WIER PROBLEM. THE SAMMAMISH LAKE LEVEL MUST BE MAINTAINED AT NO MORE THAN A 27 FOOT NGVD LEVEL, WHICH IS 30.6 NAVD. USING A 32 FOOT NAVD IN THE PROPOSED SMP PLAN IS A TOTAL INJUSTICE TO THE INTENT OF THE LEGISLATION. THE WEIR TRANSITION MUST BE FIXED AND THE LAKE LEVELS RETURNED TO THE 1977 LEVELS OF A 30.6 NAVD. UNTIL THE ABOVE IS ACCOMPLISHED THE BELLEVUE SMP PLAN MUST BE PUT ON HOLD, OR AT LEAST THE CITY OF BELLEVUE MUST USE THE 1977 NAVD LEVEL OF 30.6 FEET.**
3) **THE WASH. DEPARTMENT OF ECOLOGY HAS SET A DEADLINE OF DECEMBER 2014 TO SUBMITT FINAL SMP GUIDELINES. THIS IS AMPLE TIME FOR THE WIER PROBLEMS TO BE RESOLVED AND THE LAKE LEVEL CONTROLS RE-ESTABLISHED.**

BUD NORQUIST

SBCE/ US NAVY CIVIL ENGINEER ASSIGNED TO WATERFRONT MAINTENANCE FOR 6 YEARS ACTIVE DUTY.

John Strong **1604 W. Lk Samm Pkwy NE** **Bellevue, WA 98008** **Strong.Guo@gmail.com**	**Since 2005, the distance that my house impacts shoreline regulations and expense has increased from 25 to 50 feet, if I ignore the change in OHWM. At my house, the change in OHWM definition of about 1.4 feet means about 15 feet of shoreline that is ignored. Thus, relation to the older (3 years ago) OHWM, I move have to be 50 + 15 = 65 feet. In 4 years, the regulated distance has changed from 25 to 65 feet. It's a bit ridiculous. Don't change both at the same time. Pick one of the other.**	**5.1**
	I have an old dock that conforms dimensionally to the new rules. I want to have it rebuild to the same legal dimensions as I have today with new legal materials. The proposed SMP says I still need to do mitigations. Why? I'm already improving things with the new materials.	**5.2**

May 25, 2011

City of Bellevue Council and Planning Commission

RE: Professional Engineers' Concerns with Draft Shoreline Management Program

We're writing regarding technical considerations within the draft Bellevue Shoreline Master Plan (SMP). We are each Bellevue lakeside residents, each with training and experience as engineers. We find that the draft SMP:

- presents great potential for serious unintended consequences,
- fails to systematically identify specific, local lake-shore issues and conditions,
- disregards the magnitude and relationship to other systems' impacts,
- fails to resolve identifiable incompatibilities and conflicts,
- avoids quantification, thus preventing essential cost-effectiveness evaluation,
- would place undue burden on shoreline property owners, and
- will fail to accomplish a clearly defined and measurable set of objectives.

We discuss these concerns below and request you consider the issues we raise as you deliberate the SMP and make recommendations to the City Council.

Lake Water Levels – As an example of the failure to systematically address lake-specific issues, we point to lakes Sammamish and Phantom. They are controlled by man-made devices and conveyances under the jurisdiction of the County and City respectively. The effectiveness of lake outflows has been compromised by the lack of maintenance to assure their designed functionality. 5.3

In the case of Lake Sammamish, the Sammamish River weir and transition zone at Marymoor Park have witnessed a 60% reduction in flood-level outflow capacity over the last 8 years. Reduced maintenance actions on the part of the County have created this condition. The Corps of Engineers, the agency to whom the County is responsible for the zone's maintenance, has warned of consequences of these conditions, however, remedial action is not imminent. This presents continuing concern for shoreline residents on Sammamish.

Phantom Lake serves as a reservoir for urban runoff and the City has purposefully directed into it storm waters and landfill seepage that far exceed its capacity. Outflow to Larsen Lake has been intentionally obstructed and easements granted the City to maintain its outflow weir facilities toward Lake Sammamish are not honored.

Public safety and improved real property have been impacted because of these conditions. Properties on both lakes have been inundated and improvements such as docks subjected to accelerated deterioration rates and complete loss. Erosion of properties has occurred on Sammamish and shorelands on Phantom have been artificially coerced into wetland conditions. On both, the Ordinary High Water Mark has been moved higher. Left in this state, wind and wave action have caused erosive "benching" of otherwise stable shores, undermining stabilization and needlessly moving the water level further landward, and causing destruction of upland vegetation and trees. In the case of Phantom Lake, the quality of lake waters have suffered such eutrification that Cyanobacteria blooms are a regular and extremely

dangerous occurrence. The City's actions to maintain the Phantom Lake level has blatantly ignored the shoreline soil (peat) properties, thereby structurally compromising residential buildings, patios, and other improvements.

The State Act guides jurisdictions but acknowledges there are local conditions and issues. To be acceptable, reasonable, and prudent, the SMP must identify and deal with local conditions and issues.

Related System Impacts – As an example of the SMP's failure to systematically consider broader impacts, we point to the failure to sufficiently address increased surface water volumes directed to our lakes via the City's storm water conveyance and discharge system. We cite Phantom Lake specifically. 5.4

As currently zoned, Phantom Lake has morphed from a man-made agricultural lake to one abutting residential single-family residences and passive public parks and open space. As such, the lake site "conveys" watershed storm water runoff to downstream discharge points. However, it has been purposefully and artificially manipulated to serve as a storm water detention facility dating back to the 1970's. More specifically a staff memorandum dated April 4, 1984 evaluated the basis for a Phantom Lake Outlet Control Weir to "provide a detention function". In doing so an "unstated" objective was to reduce City capital costs for otherwise larger downstream storm water conveyance facilities and related operations and maintenance costs.

Further, Phantom Lake and the storm water conveyance infrastructure into and out of the lake are based upon prior adopted Comprehensive Plans, Zoning, and allowed land uses. There has been a recent trend throughout the City (and in the greater Metropolitan region) to allow rezoning of single family lots into smaller residential and/or multifamily lots. While there are positive reasons for increased residential (population) density, including benefits of "sustainable development" and, possibly, reduced carbon footprint, there are negative consequences being overlooked. In particular, the increase in impervious areas for buildings and other hard surfaces is adding to unprecedented flooding and erosion problems throughout the City's watersheds. This situation increases the volume of storm water and results in overtaxing the existing storm water conveyance system's capacity; as well as raising lake water levels. For Phantom Lake each 1 inch rise in the lake level translates into some 5 to 15 feet of shoreline encroachment.

At a minimum the SMP should assert that all rezones and redevelopment of existing residential properties within defined City Drainage Watershed Basins must comply with detention standards. This should specify at a minimum a "net-zero discharge" (based on a minimum 100 year storm event) as compared to that attributable to the prior land use and impervious surfaces on the property. This alone might have a greater impact on protecting shoreline ecological function than any actions taken by lakeside property owners.

The SMP fails to address or directly integrate meaningful solutions to these issues in a comprehensive and coordinated manner.

Competing Departmental Objectives and Interests – Here we cite two examples. First, as residents we were disappointed earlier this year when, after receiving draft SMP materials, staff of the Utilities Department proceeded to independently recommend policy changes to the Environmental Services Commission. One of these would have absolved the department and the City of responsibility for sedimentation which is a serious lake problem which residents have brought to the Commission's attention. Such blatant disregard of City responsibility for impacts to the lake environment is unacceptable. 5.5

Another example of relevant interdepartmental disconnects is the 1995 Watershed Management District Resolution #5968. It is outdated in context and fails to serve its original intent to assess the potential of a "Phantom Lake *Watershed* District" to address the then growing storm water and related issues. The District was never formed and yet the Resolution still exists today – more than 15 years later. Worse, the Utilities Department interprets #5968 (February 2011 Vidmar letter to resident Brian Parks) to restrict any City "projects or studies" or maintenance on Phantom Lake.

In the meantime City staff continues to confuse the Council with the notion of a "lakeshore" management district which was not specified in the Resolution. This has resulted in a gross lack of maintenance of the outlet weir and its downstream features; resulting in reoccurring, artificially, and exceptionally high Phantom Lake levels, flooding of lake shorelines, property damage, and safety issues. Ironically, these issues and damages also extend to the property owners from whom the City obtained the easement for the weir facility which controls outflow.

Integration of programs and staff efforts cannot be tacit, token, and disconnected. Lacking meaningful integration, promulgation of burdensome SMP requirements will further disenfranchise residents and must be avoided.

No Net Loss (NNL) – "Numerics" (numbers) have been sacrificed in the SMP. A *subjective* assessment characterizing the "Ecological Functions" of sections of Bellevue shorelines is offered as the basis of a "No Net Loss" goal. Large dollar expenditures would be imposed on property owners based on how someone felt about their shoreline. A similar, subjective decision environment would not be acceptable in a City contract bidding process or one outside government in the business world. 5.6

The State shoreline guidelines define the elements of ecological function. These: (1) must be assessed in a precise manner, (2) should be related specifically to objectives and costs, and (3) should not be viewed as the sole basis for sound decision making. Requirements that would be placed on homeowners must be shown to have meaningful benefit on a quantitative basis within the NNL concept. Government expenditures are prioritized based on anticipated effectiveness. The same must apply to the governed.

The plan is not clear what the City is attempting to achieve. Merely measuring the number of feet of bulkhead removed from shorelines does not measure a meaningful, reasonable, end-state goal. If definitive science has formed the basis of the plan, goals and objectives should be readily definable, quantified, and ultimately monitored.

We ask that every SMP Plan provision be examined against the test of solid science and engineering evidence. A vague assurance of "Precaution" is not an acceptable basis for the expenditure of either citizens' funds or municipal tax dollars, particularly in this time of national and local economic distress.

Safety Issues - Flooding, erosion, chemical and bacterial pollution, sedimentation, and personal safety are among the issues of note within the draft SMP. As but one example, the proposed program would encourage dock standards enticing applicants to accept 3 foot wide dock walkways. In our opinion this would be unsafe and would never be allowed on public facilities with ADA requirements. As another example, high water levels destroy lakeside trees creating liability for residents. And, contrary to stated limitations within State code, isolated pockets of wildlife habitat would be created and with it nuisance pests, rodents, or worse, larger and more dangerous species would be carelessly promoted amongst urbanized shorelines. 5.7

Such safety related issues are readily evident in the draft SMP and have been brought repeatedly to the Commission's attention. Combined with the issues identified above, the draft SMP houses many unintended consequences.

The Commission must step back and assure these unintended consequences do not, in the aggregate, undermine the effectiveness of the entire program.

Respectfully submitted,

Wm. Barger, PE (ret.)
344 WLS Pkwy NE

Vic Bishop, PE
2114 WLS Pkwy SE

Terry Lemke, PE
2004 WLS Pkwy SE

Michael R. Mariano, PE
16341 SE 16th St

Martin C. Nizlek, PE (ret.)
312 WLS Pkwy NE

Bud Norquist, BSCE
372 WLS Pkwy NE

John Strong, PE
1604 WLS Pkwy NE

Mark S. Sussman, PE (ret.)
3110 WLS Pkwy SE

John Strong,	he along with William Barger, PE, Vic Bishop, PE, Terry Lempke, PE, Michael Mariano, PE, Martin Nizlek, PE, Bud Nordquist, PE, and Mark Susland, PE, all of whom live on the shorelines, as professional engineers balance safety and regulatory requirements against cost. He said that discipline is lacking in the draft Shoreline Master Program. He submitted to the Commission a letter authored by the named persons in which it was stated that the group finds in the draft the potential for serious unintended consequences. It fails to systematically identify specific local lakeshore issues and conditions. It disregards the magnitude and relationship of other systems impacts. It fails to resolve identifiable incompatibilities and conflicts. It avoids quantification, thus preventing essential cost-effectiveness evaluation. It places undue burdens on shoreline property owners and fails to accomplish a clearly defined set of objectives. The Commission was asked to consider the issues raised in developing a recommendation to the City Council. With regard to lake water levels, he said in the case of Lake Sammamish the Sammamish River weir and transition zone at Marymoor Park have witnessed a 40 percent reduction in outflow over the past eight years created by reduced maintenance action on the part of King County. The Corps of Engineers has voiced warnings about the consequences of the conditions, but remedial action is not imminent. Public safety and improved real property have been impacted by the high water conditions. Properties on Lake Sammamish and Lake Washington have been inundated and improvements such as docks have been subjected to deterioration and complete loss. The ordinary high water mark has been moved higher, a fact that is reflected in the draft document and which has affected many property owners. Numbers have been sacrificed in the draft. A subjective assessment characterizing the ecological functions of sections of Bellevue shorelines is offered as the basis of a no net loss goal. Large dollar expenditures would be imposed on property owners based on how someone felt about their shoreline. A similar subjective decision environment would not be accessible in city contract bidding processes or outside of government. The state's shoreline guidelines defines the elements of ecological function: 1) must be assessed in a precise manner; 2) should be related specifically to objectives and costs; and 3) should not be viewed as the sole basis for decision making. Requirements placed on homeowners must be shown to have a meaningful benefit on a quantifiable basis within the no net loss concept. Government expenditures are prioritized based on anticipated effectiveness, and the same must apply to the governed. Property owners having to spend thousands of dollars on remedial measures should be assured that something good will come of the outlay. The plan is not clear with regard to what the city is attempting to achieve. Merely measuring the number of feet of bulkhead removed from the shorelines does not constitute a meaningful and reasonable goal. If definitive science formed the basis of the plan, goals and objectives would be readily definable, quantifiable, and ultimately monitored. Every provision of the plan should be examined against the test of solid science and engineering evidence. A vague assurance of precaution is not an acceptable basis for the expenditure of either citizen funds or municipal tax dollars. The Commission must step back and assure that unintended consequences in the aggregate do not undermine the effectiveness of the entire program.	**5.8** **5.9** **5.10** **5.11** **5.12** **5.13**

Richard Foley **3110 W. Lk Samm Pkwy SE** **Bellevue, WA 98008** **healthwisenw@comcast.net**	**The High water mark for Lake Sammamish is now considerably higher than was officially established in the 1970's. This is due, for the most part to the fact that the water level in the lake is not adequately controlled and properties are being damaged each winter. If water level is in the purview of King County, we would hope our Planning Commission would voice the concerns of Bellevue property owners to the appropriate individuals at the County level. I have lived on Lake Sammamish for 35 years and my property is sustaining damage**	**6.1**

Lisa Tompkins Saaden PO Box 3233 Bellevue, WA 98009 veryglobal@gmail.com	Thank you for having this. I like the low pressure atmosphere but everyone was very helpful as needed. I think this event fits a variety of "people-styles". We came for information and received more than we expected. The handouts are great. Thank you again.	7.1

Rick Carovano
1622 W. Lk Samm Pkwy SE
Bellevue, WA 98008
r.k.carovano@comcast.net

SMP Problems:

1) **Poor Science** 8.1
2) **Overly Complex… 350 pages** 8.2
3) **Redundant w/Army Corp Bellevue Regs (Trees)** 8.3
4) **Burdensome on waterfront owners v. uphill property** 8.4
5) **No objective measurement as to success of these regs** 8.5
6) **Setbacks unnecessarily large** 8.6
7) **Private recreation use not recognized** 8.7
8) **Property devaluation through setbacks and water. Front trees & vegetation** 8.8
9) **Bellevue is overreaching in attempting to control waterfront in order to make use and/or redevelopment impossible or prohibitively expensive in order to drive out private property owners**

Mark Sussman **3110 W. Lk Samm Pkwy SE** **Bellevue, WA 98008** **msuss@comcast.net**	**1) Would like to see some in depth discussion under auspices of City Council on two aspects of Bellevue SMP:** **i. The science behind the regulations… how specific can it be applied to the situations covered by the regulations** **ii. How carefully has SMP been audited against the State Law (WAC/RCW) for both compliance and over-reach?**	**9.1** **9.2**

Kirk McEwan **4047 120th Avenue SE** **Bellevue, WA 98006** **kirkmcewan@hotmail.com**	**For shared docks, provisions should be made for both families to have covered moorage if desired.**	**10.1**
	If both neighbors are ok with a change, i.e. lengthening of dock, but one is going to pay for it, the existing dock should not have to be replaced if in good condition	**10.2**

Craig Foreman **craig@foremanonline.com**	**I was told that a 50' "butler/setback" is being proposed because the commission thinks that it's the minimum that the state will accept. We should propose less than 50'** **1. To be more consistent w/neighborly community; and** **2. What if the state would accept less than 50'? We should ask for 25 and have them tell us it's not enough. Maybe they would settle for 25' or 35'.**	**11.1**

Unknown	**The condition of the weir and the surrounding area dramatically affects the Lakes water level. This issue needs to be addressed immediately or any studies concerning OHWM are invalid and unsound**	**12.1**

Mike Mariano **16341 SE 16th Street** **Bellevue, WA**	**The SMP is being handled in a "vacuum". It tries to avoid the water quality and water quantities and yet is based on a "Shoreline wetland edge" that is arbitrarily set and maintained by the City.**	**13.1**
	Phantom Lake is <u>private</u> but is also a watershed drainage outlet; the City has an outlet easement and yet <u>fails</u> to perform its maintenance responsibilities causing artificial high lake levels. **For example, the weir had lagging in it up to 4/3/11 removed 4/4/11…. So we had flooding all winter and saturated soil all winter unnecessarily. And the City wants to 'maintain the shore line'?**	**13.2**

Michael R. Mariano, PE
16341 SE 16th St
Bellevue, Washington
Ph 425.941.6222

May 25, 2011

Subject: *City of Bellevue Planning Commission Hearing for the Draft Shoreline Management Program (SMP)*

Members of the City Planning Commission:

Professionally, I am a Civil Engineer registered in Washington State. Personally, I have been a resident of the City of Bellevue since 1969, and a Phantom Lake shoreline property owner since 1983. I can recall when the only signalized intersection was at NE 8th and Bellevue Way, the tallest building was the Seafirst Bank Building in downtown, the Sunset Highway (I-90) was a 4 lane undivided highway, and the Bellevue Airport was a viable enterprise. More notably, the shorelines of Phantom Lake and Lake Sammamish were sparsely populated with little if any concerns for its recreational aquatic usage, urban flooding, environmental issues, or public encroachments on our individual property rights.

Obviously with the passage of time has come change: Signalized intersections are now everywhere and interconnected, the Seafirst Bank Building is lost in the skyline, the airport site has been rezoned to an office park, and I-90 is now a multilane freeway. I-90 helped spur the development (and current re-development) of "East Bellevue". It also opened up development to the east in Issaquah and Sammamish to name a few new communities. More importantly the City's 1976 annexation of East Bellevue established an increased City stewardship for the "urbanization" of our community; and, in doing so the management of the opportunities, resources and the impacts.

13.3

This stewardship has been significantly challenged by increasingly well intended but often overly complicated, frequently disjointed and uncoordinated, and increasingly restrictive Federal, State, King County (among others) regulations and policies over the jurisdictional interests in our public and private water resources. In this regard, I am especially referring to Phantom Lake and Lake Sammamish.

I stand before you today to express my concern that the SMP and the SWMP policies being drafted, in my personal and professional opinion, fail to strike the right balance between public interests and private property rights. For example, actions (such as the City adopted CAO policies on artificially established wetlands) and its inactions (such as Utilities failure to maintain the inflow/outflow to Phantom Lake and Lake Sammamish) is simply a "taking of property rights" for public benefit without due consideration of neither the impacts nor the consequences.

To this end I will address two (2) general topics that are at the top of my list of increasing concerns:

Lake Water Levels – As an example of the failure to systematically address lake-specific issues, I point to lakes Sammamish and Phantom. They are controlled by man-made devices and conveyances under the jurisdiction of the County and City respectively. The effectiveness of lake outflows has been compromised by the lack of maintenance to assure their designed functionality. **13.4**

In the case of Lake Sammamish, the Sammamish River weir and transition zone at Marymoor Park have witnessed a 60% reduction in flood-level outflow capacity over the last 8 years. Reduced maintenance actions on the part of the County have created this condition. The Corps of Engineers, the agency to whom the County is responsible for the zone's maintenance, has warned of consequences of these conditions, however, remedial action is not imminent. This presents continuing concern for shoreline residents on Sammamish.

For Phantom Lake, it serves as reservoir (e.g. detention) for urban runoff. It is well documented back into the 1970's that the County/City purposefully directed into it storm waters and landfill seepage that far exceeds its capacity. Outflow to Larsen Lake has also been intentionally and systematically obstructed. Additionally the 1990 easements granted the City to maintain Phantom Lake's outflow weir facilities toward Lake Sammamish have not been honored.

Public safety and improved real property have been impacted because of these action (and in-actions). Properties on both lakes have been inundated and improvements such as docks subjected to accelerated deterioration rates and complete loss. Erosion of properties has occurred on Sammamish and shorelands on Phantom have been artificially coerced into wetland conditions and consequently subject to CAO policies. On both, the Ordinary High Water Mark has been moved higher. Left in this state, wind and wave action have caused erosive "benching" of otherwise stable shores, undermining stabilization and needlessly moving the water level further landward, and causing destruction of upland vegetation and trees. In the case of Phantom Lake, the quality of lake waters have suffered such eutrification that Cyanobacteria blooms are a regular and extremely dangerous occurrence. The City's actions to maintain the Phantom Lake level has blatantly ignored the shoreline soil (peat) properties, thereby structurally compromising residential buildings, patios, and other improvements.

Related System Impacts – As an example of the SMP's failure to systematically consider broader impacts, I would point to the failure to sufficiently address increased surface water volumes directed to our lakes via the City's storm water conveyance and discharge system. Specifically to Phantom Lake, as currently zoned it has morphed from a man-made agricultural lake to one abutting residential single-family residences and passive public parks and open space. As such, the lake site "conveys" watershed storm water runoff to downstream discharge points. However, as I stated previously, it has been purposefully and artificially manipulated to serve as a storm water detention facility dating back to the 1970's. Among other documentation, a staff memorandum dated April 4, 1984 evaluated the basis for a Phantom Lake Outlet Control Weir to "provide a detention function". In doing so an "unstated" objective was to reduce City capital costs **13.5**

for otherwise larger downstream storm water conveyance facilities and related operations and maintenance costs.

Further, Phantom Lake and the storm water conveyance infrastructure into and out of the lake are based upon prior adopted Comprehensive Plans, Zoning, and allowed land uses. There has been a recent trend throughout the City (and in the greater Metropolitan region) to allow rezoning of single family lots into smaller residential and/or multifamily lots. While there are positive reasons for increased residential (population) density, including benefits of "sustainable development" and, possibly, reduced carbon footprint, there are negative consequences being overlooked. In particular, the increase in impervious areas for buildings and other hard surfaces is adding to unprecedented flooding and erosion problems throughout the City's watersheds. This situation increases the volume of storm water and results in overtaxing the existing storm water conveyance system's capacity; as well as raising lake water levels. Because of the flat shorelines, it has been documented that for Phantom Lake each 1 inch rise in the lake level translates into some 5 to 15 feet of shoreline encroachment.

At a minimum the SMP should assert that all rezones and redevelopment of existing residential properties within defined City Drainage Watershed Basins must comply with detention standards. This should specify at a minimum a "net-zero discharge" (based on a minimum 100 year storm event) as compared to that attributable to the prior land use and impervious surfaces on the property. This alone might have a greater impact on protecting shoreline ecological function than any actions taken by lakeside property owners.

I am one that believes we must look to the future, but we also have to collectively take responsibility where our stewardship has failed. We must assure new policies produce the desired results ---not unintended consequences. I can only trust that the Planing Commission will continue to fulfill its stewardship role for our water resources. Please assure these two areas of concerns are fully considered and reflected in the SMP policies it recommends to the City Council.

Thank You.

Michael R. Mariano, PE

Mike Mariano,	he is a civil engineer and has been a Phantom Lake shoreline property owner since 1983. He voiced his support for the statements made by the various Washington Sensible Shorelines Association representatives. He said the 1976 annexation of East Bellevue established an increased city stewardship for the urbanization of the community, along with management of opportunities, resources and impacts. The stewardship has been challenged by overly complicated, frequently disjointed, uncoordinated and increasingly restrictive regulations and policies affecting the jurisdictional interests in the public and private water resources. The draft Shoreline Master Program and the surface water management plan policies fail to strike the right balance between public interest and private property rights. As an example of the systematic failure to address lake-specific issues, Lake Washington and Phantom Lake are controlled by manmade devices and conveyances under the jurisdiction of the county and the city. The effectiveness of the outflows has been compromised by the lack of maintenance aimed at assuring the designed functionality. The Sammamish River weir transition zone at Marymoor Park has witnessed a significant reduction in outflow capacity over the last eight years, for which there is good documentation. It should be recognized that Phantom Lake has served as a reservoir and continues to do so; it is well documented that as far back as the 1970s the county and the city purposefully directed into it stormwater and landfill seepage that far exceeded the capacity of the lake. The outflow to Larson Lake has been intentionally and systematically obstructed. The 1990 easements granted to the city for the purpose of maintaining the Phantom Lake outflow weir facilities have not been honored. Public safety and real properties have been affected by the actions and inactions. On both Lake Sammamish and Phantom Lake the ordinary high water mark has been artificially moved higher, the result of which has been the erosion of otherwise stable shores from wind and wave action, and the destruction of upland vegetation and trees. The quality of the waters in Phantom Lake have suffered and cyanobacteria blooms have become a regular and dangerous occurrence. The city's actions to maintain the lake level in Phantom Lake has blatantly ignored the shoreline soil peat conditions; as such it is affecting properties, structurally compromising residential buildings, patios and other improvements. As an example of the failure of the Shoreline Master Program to systematical consider broader impacts, the failure to sufficiently address increased surface water volumes directed into the lakes via the city's stormwater conveyance and discharge system was highlighted. Phantom Lake has morphed from a manmade agricultural lake to one abutting single family residential and passive public parks and open space. As such, the lake site conveys watershed stormwater runoff to downstream discharge points. It has been purposefully and artificially manipulated to serve as a stormwater detention facility. A staff memo dated April 4, 1984, evaluated the basis for a Phantom Lake outlet control weir to provide a detention function. The stormwater conveyance infrastructure in and out of the lake are based on Comprehensive Plan zoning and allowed land uses only recently updated which are not reflected in either the Shoreline Master Program or the stormwater management plan. There has been a great trend in the area to	**13.6** **13.7**

	allow rezoning of single family lots into smaller residential and/or multifamily lots. While there are positive reasons for increasing residential population densities, there are also negative consequences being overlooked. The increase in impervious surface areas for buildings and other hard surfaces is adding to unprecedented flooding and erosion problems throughout the city's watersheds; Phantom Lake and Lake Washington are not excluded. It has been documented that for each inch of lake level rise five to fifteen feet of shoreline property is inundated. The Shoreline Master Program should assert that all rezones and redevelopment of existing residential properties within defined city drainage watershed basins must comply with all retention standards; that alone might have a greater impact on protecting shoreline ecological function that other actions taken by lakeside property owners. The city should take responsibility for where its stewardship has failed. It must assure that new policies will produce desired results, not unintended consequences.	**13.8**

From: Helland, Carol
To: Paine, Michael; Bedwell, Heidi; Pyle, David; Drews, Catherine;
Subject: Fwd: Nice to meet you
Date: Thursday, April 21, 2011 6:50:14 AM

FYI

Sent from my Verizon Wireless Phone

----- Forwarded message -----
From: "Michael Booth" <michael.s.booth@gmail.com>
Date: Wed, Apr 20, 2011 11:07 pm
Subject: Nice to meet you
To: "Helland, Carol" <CHelland@bellevuewa.gov>, "Inghram, Paul" <PInghram@bellevuewa.gov>

Thanks for the helpful information at tonight's SMP open house. You were both helpful, knowledgeable, and personable.

I've included the email I sent on to the Rosemont Beach group summarizing what I learned. Hopefully I didn't misrepresent anything too badly.

-Mike Booth

---------- Forwarded message ----------
From: **Michael Booth** <michael.s.booth@gmail.com>
Date: Wed, Apr 20, 2011 at 11:00 PM
Subject: Some data from the City Hall open house about the Shoreline Master Plan
To: rosemontbeach@yahoogroups.com

After hearing about the Shoreline Master Plan from this e-mail group the other day, I decided to go to the open house discussion about it at City Hall this evening. Our family is new to Rosemont Beach (we're at 696), and I wanted to learn more about how this all works.

I've attached pictures I took of the informational posters they had set up to address common questions and concerns. They were pretty useful.

I spoke with several officials at the open house, but most of my data comes primarily from Carol Helland (Land Use Director, chelland@bellevuewa.gov, 425-452-2724) and Paul Inghram (Planning Manager, pinghram@bellevuewa.gov, 425-452-4070).

Here are some specifics I learned (NOTE: This is my summary from memory, and I could have some details wrong. Use at your own risk!):

* The Ordinary High Water Mark (OHWM) is not being changed. The existing 1971 level remains in place, and is the default value to use. However, you will be able to have a site-specific evaluation done if you think your location's water level is different. **14.1**
* The setback distance from the OHWM is being increased from the current distance of 25' to 50' **14.2**
* The existing footprint of houses/structures closer than 50' (up to 25') are "grandfathered in". In other words, if you can remodel within that footprint (for the part of the structure within 50' of the water), no additional permits/etc are needed. **14.3**
* You can repair/maintain existing shoreline as-is, without permits. Retaining walls, docks, grass, landscape, etc are "grandfathered in". **14.4**
* If more than 50% of your retaining wall needs repair, that is considered new construction and falls under the new rules.
* If more than 20% of your dock's decking needs replacement, it will have to be with grated decking. Why the grated decking? Sunlight. Bass thrive in the dark under the decks, and eat the juvenile salmon that swim by in the shallows. **14.5**

The city also has a webpage with information, including the entire SMP draft document, here: http://www.bellevuewa.gov/shoreline-master-plan.htm

Hopefully this is helpful information.

-Mike Booth @ 696

--
-Mike

4/25/11

Re: Dock Regulations on Phantom Lake

Proposed draft regulations are highly irregular in requirements and far more restricitve than other waterfront in the City of Bellevue.

1. Dock lengths are restricted to 100 ft. on Phantom, but not on other lakefront. **15.1**
2. Dock width is restricted to 4 ft. on Phantom, but not specified on other lakefront.
3. Dock size is restricted to 250 sq. ft. on Phantom, but allowed to 480 sq. ft. on other waterfront. Note that the above requirements create a 100 ft. by $2\frac{1}{2}$ ft. maximum dock on Phantom, which would be a most unsafe situation for human use. Many existing docks are over 250 sq. ft. without appearing intrusive.
4. No moorage platform allowed on Phantom, but un-restricted on other waterfront.
5. Floating docks permitted (and most are on Phantom). But to make them safe (they can be quite unstable in use), a minimum of 6 ft. wide should be allowed, and a moorage platform is quite needed for added stability and general use. Occasionally, groups do gather at the ends of docks for boating, swimming or relaxed viewing. At least 480 sq. ft. should be allowed on Phantom as on other waterfront in Bellevue.
6. No clear regulation for gratings in dock surfaces is given, but possibly needed so that plant life gets adequate light under the dock?? Note that we observe cat-tails, water-lilies, etc, grow right under and between the boards in existing docks. Gratings are not friendly to bare feet, and they can be visually intimidating to human users, as well as other related hazards and expense to owners. We see no real benefit from installation of gratings.

Considering the above, we feel that Phantom Lake dock regulations proposed should receive further study and consideration by the City of Bellevue.

Merwyn Haneberg
16114 S.E. 24th St.
Bellevue, WA 98008
425 643-4733

5/24/11

Re: Phantom Lake Wetlands Setbacks and Regulation

The attached site plan is our property on the South side of Phantom Lake, and is typical of most neighboring properties. 270 feet of my 102 ft. wide lot is on land with the remaining 600 ft. under lake waters. Wetlands are typical along the shoreline, and intrude in many places with much flooding as a result of a mismanaged lake outlet.

The plan is marked up to illustrate that the 110 ft. setback and 20 ft. building setback eliminate any opportunity to make improvements without a Critical Areas Land Use Permit. This permit is in addition to a building permit and takes 5 to 6 months minimum to obtain, costs at least $2700.00, and which includes possible land surveys, vegetation management plans including planting of unspecifies quantities of trees, shrubs and ground-covers, additional consultant fees, and posting of bonds in favor of the City of cover eventual costs of failed plantings - all of which can add many thousands of dollars to a project. These Land Use zoning requirements with onerous setbacks and costly permits actually deters many from making simple improvements because of cost and effort to comply. 15.2

AS an architect, I have seen projects fail on many occasions in the City, not only on waterfront properties, but where steep slopes, wetlands, stream ditches and greenbelts create similar problem events for homeowners. I feel that it is one thing to protect the environment, but another to force the public to not only "improve" it and bear the costs of enforcement. I have recently seen the enforced setback management on my next door neighbor, who has extensive protected wetlands and was further forced to quit mowing his lawn right next to his house! I think that it is time to "lighten up" a bit on regulation and create an atmosphere of cooperation which can help stimulate a very troubled building economy. Please reconsider the regulation of waterfront property on Phantom Lake. 15.3

Merwyn Haneberg
16114 S.E. 24th St.
Bellevue, WA 98008
425 643-4733

Merwyn Haneberg,	his home is on the south side of Phantom Lake. He said he is currently constructing an addition to his home. He shared with the Commission a site plan of the property that was used to obtain the necessary building permits and demonstrated how the property would be divided up under the proposed regulations. The south side of the lake has a lot of wetlands, the setback from which is 110 feet in addition to a 20-foot building setback. The only way to make improvements to the property would be to obtain a critical areas land use permit, at a cost of at least $2700, in addition to a building permit; the critical areas permit includes possible land surveys, vegetation management plans, unspecified quantities of trees, shrubs and ground cover plants, additional consultant fees, and the posting of bonds in favor of the city to cover the eventual cost if something should fail on the project, all of which adds thousands of dollars to the overall cost of projects. It is one thing to protect the environment but quite another to force the public to improve the environment at their own cost. A recent enforcement action by the city against a neighbor, whose property has extensive wetlands, resulted in the city forcing the property owner to stop mowing his lawn next to his house. It is high time to lighten up on regulations and to create an atmosphere of cooperation, something which could help to stimulate a very troubled building economy. He commented that if the new regulations go into effect, his dock will become nonconforming both for length and width. The proposed limit of 250 square feet for a dock, where the dock length needs to be 100 feet, will mean the dock itself will only be allowed to be two and a half feet wide, which would not be safe. Phantom Lake should be allowed 480 square feet of dock area, which is what is allowed on the other lakes.	**15.4** **15.5** **15.6**

Draft SMP Comment #16 - Muckleshoot Indian Tribe (Karen Walter)
Prehearing Written Comments

From: Karen Walter [KWalter@muckleshoot.nsn.us]
Sent: Tuesday, May 10, 2011 2:24 PM
To: Helland, Carol
Cc: Jackson, Matthews; Paine, Michael; Radabaugh, David (ECY)
Subject: Bellevue's Shoreline Master Program Update, 07-122342 AC, 11-103227 AD, Determination of Non-Significance
Attachments: Bellevue Shoreline Master Program Update May 2011.pdf

Ms. Helland,
Attached you will find the comments from the Muckleshoot Indian Tribe Fisheries Division in response to the City of Bellevue's Draft Shoreline Master Program Update documents and SEPA threshold determination (DNS). A signed hard copy is also in the mail for your files.

Please let me know if you have any questions or would like to meet to discuss these comments.

Thank you,
Karen Walter
Watersheds and Land Use Team Leader

Muckleshoot Indian Tribe Fisheries Division
39015 172nd Ave SE
Auburn, WA 98092
253-876-3116

Comment #16

MUCKLESHOOT INDIAN TRIBE
Fisheries Division
39015 - 172nd Avenue SE • Auburn, Washington 98092-9763
Phone: (253) 939-3311 • Fax: (253) 931-0752

May 10, 2011

Ms. Carol Helland
Environmental Coordinator
City of Bellevue
Development Services Department
450 110 Avenue NE, P.O. Box 90012
Bellevue, WA 98009-9012

RE: Bellevue's Shoreline Master Program Update, 07-122342 AC, 11-103227 AD, Determination of Non-Significance

Dear Ms. Helland:

The Muckleshoot Indian Tribe Fisheries Division (MITFD) has reviewed the City of Bellevue's Draft Shoreline Master Program (SMP), including the Draft Shoreline Policies; Draft Shoreline Regulations; Restoration Plan; and the Shoreline Analysis Report, as well as, the threshold determination (DNS) for this project. We are attaching our comments in the interest of protecting and restoring the Tribe's treaty protected fisheries resources.

The MITFD appreciates the City's commitment and ongoing efforts to protect and restore salmon habitat. Clearly, the Shoreline Master Program can be a powerful tool that City can use for this purpose. The Draft SMP should be revised to acknowledge the importance of the Lakes Washington and Sammamish **16.1** and associated shoreline tributaries for the Tribe's ceremonial, commercial and substance fisheries. Tribal members fish in Lake Washington and Lake Sammamish, including areas within the City of Bellevue. The City needs to ensure that the SMP and its implementation do not continue the degradation **16.2** of treaty protected fisheries resources or impact Tribal members' ability to access these resources. **16.3**

Thank you for the continued opportunity to review and comment on the SMP. Please call me at 253-876-3116 if you would like to meet and discuss these comments.

Sincerely,

Karen Walter
Watersheds and Land Use Team Leader

Cc: David Radabaugh, WDOE, NW Region
Matthews Jackson, Bellevue, Development Services Department
Michael Paine, Bellevue, Development Services Department

The following comments are linked to specific SMP documents that we reviewed. We have identified these comments by page number and specific sections where possible. If we did not comment on a particular document, then we had no comments to offer at this time.

Specific Comments to the Public Hearing Draft Policies May 25, 2011

1. SH-70, page 19- This policy should require compliance with no net loss of functions and mitigation sequencing. BMPs will likely not be enough for a permanent structure in the shoreline setback. Consider using similar language from other policies (i.e. except "...where there is no technically feasible alternative, and where impacts to ecological functions, in both the long-and-short-term, can be adequately mitigated." **16.4**

2. SH81 and SH82, page 21- These policies conflict regarding the location of new utilities. Policy SH81 is more protective of the shoreline environment. **16.5**

3. Policy SH-83, page 21- New in-stream facilities should not be allowed; rather other non-structural steps to avoid instream impacts to salmon habitat should be taken including on the flooding properties first, including buying them. **16.6**

4. Policy SH-86, page 21- may not be achievable as lake levels for Lake Washington and consequently Lake Sammamish are managed by the US Army Corps of Engineers through Congressional authorization. Furthermore, lake levels are managed such to create a reverse hydrology opposite of what native shoreline-dependent plant and animal species including salmon in Lake Washington and Sammamish would naturally experience. **16.7**

Specific Comments to the draft Shoreline Regulations

5. 20.25E.030 Shoreline Use Charts, page 10, Aquaculture. The table should be modified to allow aquaculture associated facilities within at least the two Urban Conservancy shoreline designations since there may be a need to have an upland structure or facility associated with the aquaculture activity. **16.8**

6. 20.25.E.060.K, Vegetation Conservation standards applicable to all shoreline development and uses, page 16-
Trees that are cleared and are at least 4 inches in diameter and within 200 feet of the shoreline of areas regulated under Bellevue's Shoreline Master Program (i.e. Lake Washington, Lake Sammamish, Kelsey Creek, etc) should be placed back into the affected waterbodies or at least made available for City restoration projects. Otherwise, there will be an unmitigated temporal loss of future wood recruitment necessary to create and maintain salmon habitat. **16.9**

7. 20.25E.065.I.4, New and Replacement Residential Dock Standards, page 23-
This chart should have a maximum amount of overwater coverage in square feet for piers and docks. We recommend using the standards provided in the U.S. Army Corps of Engineers regulations in the Regional General Permit 3 (see **16.10**

http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/RGP%203%20Final%20Text%20_6-13-05_.pdf)

8. 20.25E.080.E.4.d, pages 7 and 8-
This section should have a maximum amount of overwater coverage in square feet for piers and docks. We recommend using the standards provided in the U.S. Army Corps of Engineers regulations in the Regional General Permit 3 (see http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/RGP%203%20Final%20Text%20_6-13-05_.pdf **16.11**

9. 20.25E.065.I.4.b.v, page 26, Open-sided Boat Moorage Covers should be required to be made from translucent material. **16.12**

Shoreline Restoration Plan

10. The shoreline restoration plan is a good collation of existing information and proposed projects from salmon recovery plans that could occur within the City. However, the plan lacks specific details about when the potential projects will be implemented and the City's role (including financial) in getting these projects completed. As a result, more details should be provided, otherwise there is no commitment that the City's restoration plan will be implemented. **16.13**

11. The Shoreline Restoration Plan is an opportunity to describe the progress towards implementing the various actions listed from the WRIA 8 Chinook Salmon Conservation Plan. The plan has been in place for many years now and there should be some progress towards the specific projects listed in the Shoreline Restoration Plan and/or a timeline for implementation. The WRIA8 website has a recent progress report that may be helpful. **16.14**

12. The proposed Larsen Lake restoration project should be removed from the Shoreline Restoration Plan as this project has been approved for offsite mitigation needed for the Costco redevelopment project at 15025 Main Street. A new project should be proposed in its place. **16.15**

Draft SMP Comment #17 - Donald Kurth
Prehearing Written Comments

From: Inghram, Paul
Sent: Wednesday, May 11, 2011 10:31 PM
To: Bedwell, Heidi; Pyle, David
Subject: FW: Shoreline draft SMP Input-Property Owner

Comments on the SMP Update…

From: DONALD W KURTH [mailto:heyjud01@msn.com]
Sent: Tuesday, May 10, 2011 10:10 PM
To: PlanningCommission; Judy Kurth
Subject: Shoreline draft SMP Input-Property Owner

Dear Planning Commission,

I am Donald Kurth property owner at 408 W Lk Samm Pkwy SE

Why is Bellevue Planning Department recommending changes to the Sammamish Shoreline Owners property that are more restrictive then the State of Washington requires? I have been a Lake Sammamish shoreline property owner for 33 years [Since 1978]. Since I have been here I know that the Shoreline Owners on Lake Sammamish have been the best care takers of the lake and its well being, better then the State, King County or City of Bellevue. So why is the City placing so many restrictions on our property? 17.1

The Planning Department says it is for the protection of the fish and the well being of the lake, if this was true they would be more concerned about the following:

1. Stopping the huge amount of dirty run off that comes into the lake, including new sediment that would cover any fish eggs within a quarter mile of our property.
2. Be more concerned that King County keeps the outlet of Lake Sammamish cleared and water not obstructed in its flow out of the lake 17.2
3. Recognize that it was the State of Washington that destoried the wild salmon fishery in the lake, by poison and not the property owners; and let the schools and public know this instead of blaming the shoreline owner.

The following suggested regs are not appropriate for the shoreline property:

1. Not letting the shoreline owner just replace his exsisting dock without having to go through $50,000 of permit requirements to end up with the same thing! This is over kill. 17.3
2. Plantings at the beach requirement, if you make property improvements; when the beach has been sandy for at least last 81 years. We have pictures from 1935 that show no grow on our beach property and the property around us. 17.4

New sand comes unto the beach each year from the Bellevue sediment run off and from the winter waves that bury anything on the beach and has for at least the last 81 years.

3. Leave normal high water mark at 31.8' 17.5
4. Set back of 25' is all that is needed 17.6
5. No trees or high shubs close to the water. Remember the shoreline owners are the year around life guards on the lake. We have saved the lifes of two people on the lake and we need to be able to see our 17.7

Comment #17

children and neighbors playing
on the beach and in the water and other users of the lake. This is a real safety concern.

Remember if the Bellevue Planning Department was really interested in improve the conditions on Lake Sammamish for the fish and condition of the water in Lake Sammamish they would be focusing on theirselves and getting the City of Bellevue **17.8**
to quit being the most distructive force on the lake with their excess run off. Remember it is the shoreline owner that is the best steward on the lake not the City of Bellevue! So rule requirements for the shoreline owner need only to be what is
required by the State. Before the City of Bellevue makes life more costly for the Lake Sammamish shoreline owner the Bellevue Planning Department needs to show they are good citizens and clean up their own act with the dirty runoff they put into the lake and they take no responsibility for!

Please take these comments into consideration and reduce the requirements the Bellevue Lake Sammamish Shoreline Owner needs to follow to what Washington State law requires.

Sincerely,

Donald Kurth
408 W Lk Samm Pkwy SE
Bellevue, Wa. 98008
425 562 7681

Draft SMP Comment #18 - Meydenbauer Yacht Club (Gerry Lakin)
Prehearing Written Comments

From: Pyle, David
Sent: Thursday, May 12, 2011 7:29 AM
To: Paine, Michael; Bedwell, Heidi; Helland, Carol; Drews, Catherine
Subject: FW: MBYC comment on Shoreline Management Program update
Attachments: 3rd SMP comment letter.doc

FYI….

Well crafted comments that demonstrate understanding of the issues. We should review at our next meeting.

DP

From: Gerald Lakin [mailto:glakin@msn.com]
Sent: Wednesday, May 11, 2011 9:25 PM
To: Christensen, Jeanie
Cc: Pyle, David
Subject: MBYC comment on Shoreline Management Program update

Dear Ms. Jeanie Christensen, Planning Commission Clerk
Bellevue Planning Department

Attached find final comments on the draft SMP Land Use Code from Meydenbauer Bay Yact Club. Please circulate our input to the Planning Commission and include in packet materials for their May 25 meeting. I've also snail-mailed a hard copy to you. Thank you.

Best Regards,

Gerry Lakin, representative
MBYC Bay Committee
425 746 7812

Comment #18

Meydenbauer Bay Yacht Club
Bellevue, WA 98009

May 11, 2011

To: Bellevue Planning Commission

Subject: Shoreline Management Plan

We have completed our review of the 2011 draft SMP. Comments are attached to this letter and relate to ***Accessory Structures, Minor Expansion, Parking, Aquatic Weed Control and Dredging***. These comments supplement those submitted to you via email on April 4 relating to ***Public Access.*** The April 4 submittal is also attached for reference.

MBYC first met with Michael Paine, manager of the Development Services Dept, on June 17, 2009 to discuss how the SMP update might impact MBYC. Subsequently we sent a letter dated July 6, 2009 to the Planning Dept summarizing our initial review of the updated SMP as it related to yacht clubs. Since then we have met numerous times with the Planning Department to discuss issues; some of our suggestions have been incorporated in the SMP draft.

We also have supported the following changes that have already been made:

- Creation of a separate ***Yacht Club*** designation; **18.1**
- Elimination of a ***'critical areas buffer'*** along the general Lake WA shoreline; and **18.2**
- Addition of code that allows a ***'20% minor expansion'*** to existing shoreline developments. **18.3**

If you have questions regarding our input, please contact the signatory below.

Thank you for making the SMP update an open public process.

Sincerely,

Gerry Lakin
Director of SMP
Committee on Neighbor and Government Relations

425 746 7812
glakin@msn.com

ATTACHMENT 1: ***Accessory Structures, Minor Expansion, Parking, Aquatic Weed Control and Dredging***.

Demand for additional Recreational Boating areas

SMP Draft Policy and LUC 20.25E.010 D.6. Recreational Boating Environment b. Designation Criteria could be interpreted to mean that additional RB areas may be designated only as a result of an increase in demand for public uses. There is also a potential increase in demand for private RB facilities. Change the sentence as follows: **18.4**

Additional RB areas may be designated as demand for public and private access to viewing, water-oriented recreation, and recreational boating facilities increases.

Accessory structures in the shoreline jurisdiction

Requirements for new accessory structures in the shoreline setback that support recreational facilities are given in LUC 20.25E.070 C.3.f. However, paragraph i. appears to limit use of these accessory structures to the housing of emergency equipment and beach supplies. Add the highlighted sentence to this paragraph (shown below) to indicate other accessory structure uses are appropriate. **18.5**

i. Accessory Structures--Limitations. One accessory structure, measuring less than 200 square feet and less than 15 feet high, which supports a water-dependant recreational use is allowed in the shoreline setback. Such an accessory structure may use or support general and/or emergency operations, such as housing emergency equipment and supplies associated with a swimming beach or dock or other water-dependent activity. Accessory structures used to provide an educational or cultural component to a water-dependent activity are allowed in the shoreline setback.

LUC 20.25E.070 C.3.g.i. allows over-water structures for yacht clubs, community clubs and marinas. Add the highlighted sentence to this paragraph (shown below) to indicate that accessory structures used for recreational boating related instruction, training and meetings are appropriate. **18.6**

1. Over-water Structures--Limitations. Over-water structures are allowed only for Yacht Clubs, Community Clubs, and Marinas or for public recreation and public access facilities. Over-water accessory structures used to support an educational or cultural component to a water-dependent activity are allowed. Non-water-dependent commercial uses shall not be allowed over water, except where the use is appurtenant to and necessary to support water-dependent uses, such as fueling docks, restrooms, and boating-related retail services.

LUC 20.25E.070 C. 4. states that "Minor expansions of accessory structures located in the shoreline setback are prohibited, except as consistent with the **18.7**

performance criteria of C.3.d and C.3.f." However, C.3.d and C.3.f are applicable to new facilities or facilities that are expanded beyond a minor expansion (more than 20%). Add the highlighted sentence to this paragraph (shown below) to indicate that expansion of an accessory structure as part of a minor expansion is allowed.

iv. Maintenance and repair of accessory structures in the shoreline setback shall comply with repair standards set forth in LUC 20.25E.040 for nonconforming shoreline conditions. Minor expansions of accessory structures located in the shoreline setback are prohibited, except as consistent with the performance criteria of C.3.d and C.3.f, or as required to support a permitted **minor expansion** of a Recreational Boating facility.

Consistency in maintenance, repair and minor expansion requirements

Change LUC 20.25E.080 to read the same as LUC 20.25.070 C.2.a. **18.8**

a. Maintenance and repair as used in this section includes actions to repair a failed or degraded component of a facility with the intent of restoring the facility to its original design condition, function, and capacity. Improvements not meeting the definition of maintenance and repair or minor expansion (less than 20% per LUC 20.25.070 C.2.b) shall be processed as new or expanded recreational facility. ~~Expansion or r~~ Reconfiguration of facility components do not constitute repairs and ~~are~~ will be processed as a new or expanded non-residential moorage facility, boat ramp or launch.

Parking to support minor expansion of RB facility

LUC 20.25E.060 H. applies to development of accessory parking in addition to the requirements of LUC 20.20.590. However, SMP policy and LUC do not explicitly state that additional accessory parking is allowed when a permitted minor expansion (LUC 20.25E.070 C. 2. b.) of a Recreational Boating facility is accomplished. Add the highlighted sentence below to LUC 20.25E.060 H. **18.9**

H. Accessory Parking, Loading Space, and Maintenance Access.

2. Applicability. This section applies to development of accessory parking, loading space, and maintenance access within shoreline jurisdiction. The provisions of LUC 20.20.590 also apply, except as they conflict with paragraph H of this section. The requirements of this section do not apply to parking that is accessory to a single-family use.

2. When Allowed. Parking, loading space, and maintenance access is allowed in shoreline jurisdiction only when accessory to a specific permitted use; otherwise these uses are prohibited in the shoreline jurisdiction. Additional accessory parking is allowed when part of a permitted minor expansion of a Recreational Boating facility.

Control of Aquatic Weeds

Revise policy statement SH-52 as follows. Develop regulatory concepts and LUC consistent with this policy.: **18.10**

SH-52. Discourage use of agricultural fertilizers and pesticides in the shoreline jurisdiction through education. ~~, suggest alternatives such as use of Department of Ecology approved herbicides to control aquatic weeds w~~ When native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of aquatic weeds, their control and removal ~~cannot be effectively~~ should be accomplished by approved mechanical, cultural, and/or biological means. The elimination of aquatic noxious and nuisance weeds will be in accordance with current DOE regulations. The corresponding regulatory concepts and LUC will not preclude and/or prejudice the appropriate use of approved aquatic herbicides when applied in accordance with DOE policies and practices.

Dredging

The policy statement and LUC on dredging do not explicitly cover dredging required to maintain adequate depth for boat moorage. It also does not identify the primary causes or party responsible for bringing about the need for dredging. The highlighted verbiage should be included in policy statement SH-97 and LUC 20.25E.080 D.2.a. **18.11**

SH-97. Prohibit dredging except where necessary to maintain existing navigational access, boat moorage depth, existing agricultural activities, water quality and quantity, to implement habitat improvement projects, to comply with federal or state remedial actions, and to protect the public health and safety. The extent and the frequency of allowed dredging shall be proportional to the accumulation of sediments deposited by creeks, storm drains and upland development, and shall be the minimum necessary consistent with the purpose of the specific activity and local conditions. Parties responsible for deposits of sediments in the Aquatic Environment that do not naturally occur should be responsible for their removal.

20.25E.080 D. Dredging and Dredge Material Disposal

2. Dredging – Limitations.
    a. To maintain navigability and acceptable boat moorage depth; provided the dredging is proportional to the accumulation of sediments deposited by creeks, storm drains and upland development ~~limited to~~ and the extent of the previously approved dredging and/or existing authorized location, depth, and width;

ATTCHMENT 2: ***Public Access***

Meydenbauer Bay Yacht Club ***April 4, 2011***
P.O. Box 863
Bellevue, WA 98009

To: Bellevue Planning Commission

Subject: Shoreline Management Plan

Our questions, concerns and input to the SMP draft have generally been addressed during meetings with City staff which has negated our need to comment directly to your Planning Commission. However, there is an issue we feel strongly about that we would like to bring to your attention. It was the same issue we raised to the Steering Committee and Bellevue City Council during planning of the proposed Meydenbauer Bay Park.

During development of the Park plan, MBYC was asked to provide public access to our facility in conjunction with the public park. We told the city NO and they accepted it. We said that we provided selected public access already, with our youth sailing program which is open to the public. We also provide controlled public access during certain events such as Special Peoples Cruise, Opening Day, Power Squadron meetings, Coast Guard Auxiliary meetings, etc. Our Insurance does not permit general public access without our control; on-site security would have to be significantly increased. **18.12** **18.13**

The MBYC site is 100% occupied by moorage of member boats and shoreline accessory use. It doesn't make sense to provide a portion of our private shoreline and infrastructure for public access when there will be 10 acres and a quarter mile of public shoreline next door at the new Meydenbauer Bay Park. **18.14**

SMP code supports our position. Priority of shoreline use is given in LUC 20.25E.010 F and reproduced below.

> c. Priority of Uses. Development, redevelopment, and use of lakes Washington and Sammamish and their associated shorelands shall be prioritized as set forth in RCW 90.58.020(1)-(7). Pursuant to WAC 173-26-181, preferred uses exhibit the characteristics listed below in descending order of priority:
>
> i. Recognize and protect the statewide interest over local interest for Shorelines of Statewide Significance.
> ii. Preserve the natural character of the shorelines.
> iii. Result in long-term over short-term benefits.
> iv. Protect the resources and ecology of the shorelines.
> ***v. Increase public access to publicly owned areas of the shorelines.***
> ***vi. Increase recreational opportunities for the public in the shoreline.***
> vii. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

Clearly the code requires public access only to publicly owned areas. Access and water-enjoyment opportunities on privately owned areas should be provided to the public on a voluntary basis. To reinforce this concept, MBYC strongly recommends changes given on the next page. **18.15**

Gerry Lakin (425 746 7812, glakin@msn.com)

Representative, MBYC Bay Committee

RECOMMENDED CODE CHANGES

- The definition of "Yacht Club" from the March 9, 2011 draft of LUC 20.25E.280 is given below. The verbiage in red should be substituted for the deleted text. It should be noted that this definition was initially supplied by MBYC except for the deleted text which was added by staff. **18.16**

20.25E.280 Definitions Specific to the Shoreline Overlay District

Yacht Club. A yacht club is a water-dependent recreational boating club that provides water access and moorage to the club's members and guests. Uses at a yacht club include boat moorage, social gathering space and facilities, small boat storage and launching, sanitary waste collection, service and repair to moored boats, member and guest parking, and typical yacht club social activities including food and beverage services for members and guests, social gatherings, and meetings. Additional activities may include cultural, educational, and charitable elements related to recreational boating, including hosting of water-related public/private organizations and events, boating and sailing instructions, and providing water enjoyment experiences to some who would not have access to the water. Yacht Clubs are not intended to support commercial, industrial, mixed-use, or general public access except on a voluntary basis for controlled public access events. ~~as required by the SMP~~.

- Specific parts of draft LUC 20.25E.060 and 070 inappropriately require that public access to private facilities, including MBYC, are provided under certain conditions. The verbiage in red should be added to LUC 20.25E.060 I and related sections as shown below. **18.17**

20.25E.060 General Requirements Applicable to all Shoreline Development and Uses I. Public Access

1. Purpose and Scope. …Consequently, public access, or when appropriate, visual access, shall be incorporated in all new development, reconstruction or replacement project of public recreational facilities with some modest exceptions. Incorporation of public access (or visual access) into new, re-constructed or replaced private recreational facilities shall be voluntary. Single-family residences are not required to provide public access, unless part of a new subdivision…

2. When Required.

    d. Recreation use projects in publicly owned areas of the shoreline that propose new uses or the reconstruction or replacement of existing uses.

Also modify sections 3 thru 9 of LUC 20.25E.060 and applicable sections of LUC 20.25E.070 to incorporate the concept that public access to private recreational facilities shall be voluntary.

Draft SMP Comment #19 - Leonard Stevens
Prehearing Written Comments

From: Inghram, Paul
Sent: Tuesday, May 17, 2011 2:18 PM
To: Bedwell, Heidi; Helland, Carol
Subject: FW: SPM

-----Original Message-----
From: Leonard Stevens [mailto:stevens242@comcast.net]
Sent: Thursday, May 12, 2011 6:51 PM
To: PlanningCommission
Subject: SPM

I want to object for the city's plan to change the set back policy for waterfront property from 25 ft to 50 ft. This seems excessive to me, and from what I understand, most if not all the other cities on Lake Sammamish, have a 25 ft set back. This would have a negative affect on homeowners ability to develop their properties, as well as reduce property values. I do not see the logic of the City of Bellevue. **19.1**

Additionally, the City/County has finally agreed to maintain the weir on Lake Sammamish to reduce the high water/flooding issue. It was about time to honor the commitment. **19.2**

Thank you.

Leonard R Stevens
1250 W Lake Sammamish Pkwy SE
Bellevue, WA 98008

Comment #19

PCS Board to Planning Cmn.txt

From: Parker, Camron
Sent: Monday, May 16, 2011 1:12 PM
To: Helland, Carol; Paine, Michael; Pyle, David; Bedwell, Heidi
Cc: Foran, Patrick; Smith, Terry; Kost, Glenn; McVein, Shelley; Paulsen, Kit; Dewald, Dan; Bradley, Geoff; Fehrman, Pamela; Bergstrom, Michael; Harvey, Nancy
Subject: SMP comment letter, PCS Board to Planning Cmn
Attachments: 051011PBcommentltrFINAL.pdf

Carol and SMP Team,

Attached is the letter approved by the Parks & Community Services Board for transmittal to the
Planning Commission. Thanks to David for adding two night meetings to his schedule in April and May
to present and answer SMP-related questions of the Board.

If you have any questions, please let me know.

_____
Camron Parker
Parks & Community Services
-2032

City of Bellevue
Parks & Community Services

MEMORANDUM

Date: May 12, 2011

To: Hal Ferris, Chair
Planning Commission

From: Faith Roland, Chair
Parks & Community Services Board

Subject: Shoreline Master Program Comment Letter

Thank you for the opportunity to comment on the draft Shoreline Master Program. Development Services staff attended our meetings in April and May to provide information on the update process. Upon review of the draft policies, the Parks & Community Services Board offers three overarching principles for the Planning Commission to use as it considers regulations impacting public access, shoreline recreation and open space uses. Additionally, the Board provides specific draft policy modifications for your consideration that support these principles.

The SMP should support the City's long-standing policy of increasing public access to the shoreline and preserving open space. 20.1

The city's first park acquisitions in the 1950's were shoreline parks. Since that time, acquisition and development of shoreline and wetland parks has remained a top priority. The 2010 Parks & Open Space System Plan, as adopted by the City Council, calls for continued waterfront, wetland and stream-side acquisition for the next 20 years to increase access for all Bellevue residents and preserve unique and valuable open space. Public access can be improved by maintaining and improving public view corridors[1] and improving directional signage to existing facilities. Further, and in combination with the above, requiring major private redevelopments to design for public view and access can assist in reaching the Shoreline Management Act's public access goal.

The SMP should recognize that parks use a small percentage of Bellevue's overall shoreline to serve all Bellevue residents. To accommodate demand, intense use of the shoreline is often necessary. 20.2

Bellevue's waterfront parks are highly used facilities. Less than 4% of residential lots in Bellevue front water. The vast majority of Bellevue residents consider Bellevue parks their waterfront property. Bellevue's population of 122,000 has access to approximately 12% (1.7 miles) of Bellevue's shoreline in the form of public parks. The high demand on these facilities is reflected in a 2009 statistically significant survey of Bellevue residents finding that 69% of Bellevue residents visit a community beach, waterfront park or boat launch at least twice every year. Almost 40% visit six or more times per year.

The SMP should allow a balance of public access, ecological restoration and historic and cultural preservation and restrict uses in shoreline and wetland parks that do not advance these interests. 20.3

The 2009 Bellevue resident survey referenced above found that Bellevue residents express a strong desire for the City to continue to develop waterfront parks and boat launches, improve the ecological function of forests, wetlands, lakes and streams and preserve

[1] A concept supported by draft policy SH-43

historical structures and heritage sites. The City has been able to make this balance under the existing SMP and seeks to continue under the new regulations. Consider the following from the 2010 Parks & Open Space System Plan:

> Mercer Slough Nature Park is an excellent example of parkland serving multiple functions. It offers trails for pedestrians and bicyclists and waterways for canoes and kayaks. The wetlands and waterways of Mercer Slough provide habitat for more than 160 different species of wildlife, including heron, beaver, and salmon. A sense of Bellevue's historical and cultural heritage is preserved at the historic Winters House and through the continuing agricultural practices of farming blueberries in the park. In addition, the Pacific Science Center offers environmental education programs at the Mercer Slough Environmental Education Center. Added to this, the Slough provides immense benefits in stormwater detention, water quality filtering and carbon emission capture and storage.

To aid in aligning the draft SMP policies to the above principles, the Parks & Community Services Board recommends the following draft policy modifications. The first recommended modification adds weight to the community's priority of creating additional public access and more directly transfers the meaning and intent of existing SMP Policy SH-21 into the revised policy set.

General Policies
SH-18. ~~Provide~~ Encourage acquisition and development of additional public or community access consistent with the existing character of the shoreline, the scale or type of development, and in full consideration of the impact on ecological function. **20.4**

The second recommended modification broadens the scope of the policy to address a wider variety of water-oriented recreation activities.

Recreation Use Policies
SH-63. Encourage existing recreation facilities to provide as appropriate, access to a variety of public water-enjoyment activities including but not limited to non-motorized boat launching facilities. Require new recreation facilities to provide as appropriate, access to a variety of public water-enjoyment activities including but not limited to ~~public~~ non-motorized boat launching facilities where feasible. **20.5**

The third recommended modification adds a new policy that encourages higher utilization of existing shoreline recreation resources by better directing residents to their location through signage.

Sign Policies
SH XX(new): To promote and facilitate public enjoyment of the waterfront, encouraging signage and wayfinding techniques to direct individuals to public access points from nearby streets and trails. **20.6**

Draft SMP Comment #21 - Chas Hill
Prehearing Written Comments

From: Inghram, Paul
Sent: Wednesday, May 25, 2011 6:03 PM
To: Bedwell, Heidi
Subject: FW: SHORELINE UP COMMING ON 25 MAY 2011

May have sent this to you previously…

From: ChasLHill@aol.com [mailto:ChasLHill@aol.com]
Sent: Monday, May 16, 2011 6:18 PM
To: PlanningCommission
Subject: SHORELINE UP COMMING ON 25 MAY 2011

THANKS TO ALL OF YOUR TEAM FOR THE WELL PRESENTED INTERACTIVE SHORELINE MEETING ON MAY 20. I REALIZED THAT NOT EVERYTHING COULD BE COVERED. OUR HOME WAS PURCHASED 27 YEARS AGO. AT THAT TIME THE HOME WAS LOCATED IN KING COUNTY. THE QUESTION WHICH COMES TO MIND, ARE WE IN COMPLIANCE AND HOW WOULD WE DETERMINE THAT FACT CONSIDERING THAT WE HAVE NO BUILDING PLANS NOR LEGAL DOCUMENTS TO SUBSTANTIATE ANY LEGAL ISSUE BASED ON HISTORICAL DATA. IT WOULD SEEM REASONABLE THAT FROM THE DATE FORWARD WE WOULD BE REQUIRED TO BE IN STRICT COMPLIANCE.

21.1

Comment #21

Draft SMP Comment #22 - Carolyn Martin
Prehearing Written Comments

From: Inghram, Paul
Sent: Tuesday, May 17, 2011 2:20 PM
To: Bedwell, Heidi; Helland, Carol
Subject: FW: Comments to be made part of SMP record

From: Carolyn Martin [mailto:k.c.martin@comcast.net]
Sent: Thursday, May 12, 2011 10:04 PM
To: PlanningCommission
Subject: Comments to be made part of SMP record

I request that my input be made part of the SMP record.

I was an attendee of the April 20th SMP Open House. I didn't turn in my comment card as I was appalled at the taxpayer money that has been spent on a restrictive, regulatory intrusion into homeowner's rights. I'm sorry to say that I think that all three hundred sixty pages of the draft shoreline regulations should be dumped as it is seriously flawed. **22.1**

There have been millions of dollars of damage to Lake Sammamish bulkheads and docks due to the high water and the SMP is worried about planting posies. The high water damage is directly related to runoff from new housing developments on the east side of the lake with little or no concern by the various permitting agencies to the consequences.

The high water problem has damaged at least 25% of the docks and bulkheads on the lake. Any planting per the SMP would be washed out in the first year. **22.2**

There is nothing wrong with the permit process and regulations that are in place. In 2008 I had to rebuild my dock due to high water damage. It cost $45,000 under the current regulations. I can only imagine what it would cost and the permit process required to meet the proposed SMP plan. **22.3**

It appears that the SMP plan is yet another government intrusion that will have the long term effect of making it ridiculously expensive to make any changes to our property. It will have the effect of de-valuing our property. The idea of making the whole lake one big municipal park is downright criminal. **22.4**

Again, this SMP plan is a big waste of taxpayer money that could be used for constructive projects, especially in this time of hard economic times. Our tax dollars are being wasted. Dump this SMP plan and solve the high water problem.

Comment #22

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

From: dallas [dallas2254@comcast.net]
Sent: Friday, May 20, 2011 1:49 PM
To: Drews, Catherine; Paine, Michael; Bedwell, Heidi; Helland, Carol; DRAD461@ecy.wa.gov; Brennan, Mike
Subject: FW: Response to your email of March 19, 2011 re: Draft Shoreline Analysis Report

I request that this document (including all communication between you and me on this matter) be included as a matter of public record and be included in the public hearing records to be held on May 25th. I will be summarizing this document in my public comments to the commissioners.

Catherine,

Thank you for your reply to my request in an effort by the City of Bellevue to document the methodology in collecting the data that we all know played a very critical role in producing a shoreline inventory report. We all agree that the intent and outcome of this report was to establish a baseline for which the no net loss standard and cumulative impact will be measured as you have mentioned.

I find your reply to my request to be inadequate in describing the methodology used to acquire the **23.1** shoreline armoring data because if you take into account the timing of when the survey was done, the rest of your story does not add up to how the data was used to validate the results of the inventory study. First of all it is thought to be a requirement of any scientific based study that the methodology **23.2** used in acquiring data to be used in a such study should be presented with the methodology and substantial evidence that it has been peer reviewed to establish validity.

I found if very odd that The Watershed Company did not cover any aspect of the methodology used in collecting the data the Bellevue planning staff supplied them in their study to substantiate their inventory study as it pertains to shoreline armoring. Your description of the methodology is at best confusing and at best not in line with what the DOE and the WAC clearly state constitute shoreline armoring. Your reply states: " It is the presence and not the location of shoreline modifications, although the location may affect the degree of the impact, which affects shoreline ecological functions." I think we all can reason that the location of shoreline armoring is very important to the desired outcome of reducing further degradation of shoreline ecological function. Furthermore, **23.3** identifying retaining wall located 35 feet from the existing OWHM is not as important and a structure making contact with the shoreline and water. The Watershed company was apparently unaware that your so called accurately carried out inventory of bulkheads on the Lake was also identifying **23.4** substantial numbers of retaining walls and misidentified structures that had not reason to be identified as shoreline armoring. Your reasoning from this point on is just to put a spin on the obvious lack of integrity of the data collected that my report proves beyond any reasonable doubt is substantially flawed.

Comment #23

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

You state " For the survey, armoring included concrete, metal, and wood bulkheads and rockeries, regardless of relationship to the ordinary high water mark." I agree with that statement too. So if that is the truth about the methodology used in gathering the data given to the Watershed Company then the data was misinterpreted by The Watershed Company when they reported the extent of shoreline armoring according to DOE and the WAC's definition of what constitutes shoreline armoring. I highly doubt that The Watershed Company knowingly had this objective.

The severity of the problem with the Bellevue shoreline inventory cannot be understated. Look how the Cities of Burien and Mercer Island are using their inventory study to substantiate their setbacks and the lack of impact that their shoreline armoring is impacting the ecological function of their shorelines. It is nothing short of disingenuous behavior of the Bellevue Staff not to redo their study to reflect the most current and accurate data available. Any regulation that would take more usable shoreline and yard away from existing uses using data that is definitely corrupt is a disservice to the community that the Bellevue planning staff represents and it amounts to taking away personal property rights with no convincing evidence that it is required under existing conditions. **23.5**

The following questions and arguments will point to the obvious issues that make the Bellevue shoreline inventory study non reliable for inclusion into Bellevue's shoreline master plan. It is not the best available science. I will elaborate on each point so that individually and collectively. My conclusion will show that there are more questions raised by the intent to use this data out of context than you observations take into account. **23.6**

Timing of Study as it relates to jurisdiction Between 1/3 to 1/2 of the lake Sammamish Bellevue shoreline jurisdiction was in fact still under the jurisdiction of King County prior to 2001. Ordinance 5277 (West Lake Sammamish Annexation) was passed by the City Council on March 5th, 2001. So if your contention is that the 1999 GIS mapping was specifically designed to follow DOE guidelines (that were not written yet) for shorelines that were still within King Counties jurisdiction, I would like to know what specific things they were looking for. What were the stated objectives of the 1999 survey of the shoreline within King County's jurisdiction? Turning this around, if you are using a King County survey, then why did they do Bellevue's portion of the lake? Did the City or the County commission this survey? My impression is that this so called inventory survey was nothing more than looking for retaining walls visually from the water or aerial photographs and this had nothing to do within a close proximity to the OHWM as you state. Is it possible that the City could have hired someone to map out the sewer line going around the lake in 1999, and to some degree, mapped all the armoring and retaining walls that might be within a certain distance of the sewer line. Perhaps these data points were collected for use by the utilities department for utilities related business. I suspect that the City was more interested in future cost of repairing or replacing the asbestos sewer lines and residential connections back in pre annex 1999 than looking at doing the SMP study. That is just one justification that I came up with.

Ordinary High Water Mark (OHWM) The difference between the OHWM in 2000 30.59 (27.00) per

Comment #23

Army Corp, in relation to where it is currently declared to be at 31.76 (27.83) would move the OHWM as between 10 to 15 feet up the shoreline on my property alone. This little fact, in and of itself, is the smoking gun when it comes to questioning the integrity of The Watershed Inventory study. There is no mention of any compensation for what constituted shoreline armoring in the year 2000 compared to today at the lower OWHM as it existed back in 1999. The Watershed Company should have known that the OHWM was different between the date the GIS mapping was done and the OHWM that exist at the time the report was completed. The Watershed Company convinced the City of Bellevue to **23.7** raise the OHWM back in August 2004. Why did they not mention this abnormality in their report or even raise some suspicion that the data might be in error? Obviously this would have meant that the outcome of their armoring report would have been substantially less than my verification on a property by property basis that showed 34% armoring. the fact that The Watershed Report came up with 72 % armoring clearly points to a major spin that the Bellevue Planning Staff is trying to put on this story line.

You state that the survey crews were not concerned about the Ordinary high water mark then why is everything in the new regulations that the planning staff is trying to justify in front of the planning commission is based upon the placement of the OHWM. This is just plain screwy logic and this sounds really confusing. In fact I shall call it nothing short putting a spin on the inferior data collected to make it look like is was collected in a scientifically reproducible manner (peer reviewed for accuracy) NOT!. **23.8**

You said " Report is not designed to inventory individual shoreline properties or determine the extent of any shoreline modifications or armoring as they relate to the ordinary high water mark" but then you say "City survey crews inventoried shoreline armoring using field surveys in late summer and early fall of 1999 using digital survey equipment. The survey was to measure the extent of shoreline armoring to enable analysis of related impacts on shoreline ecological functions, which interested the City because of the potential for takings claims under the federal Endangered Species Act". **23.9**

Which way is it? I am confused. you contradict yourself by going from saying the previous statement to starting out your methodology to say " the Report is not designed to inventory individual shoreline properties or determine the extent of any shoreline modifications or armoring as they relate to the ordinary high water mark".

Does shoreline armoring only occur near a water mark or can it occur where there is no shoreline. Another contradiction that is meant only to put a spin on bad data. Again, why was the City doing King County's work or visa-a-versa on a good portion of lake Sammamish. I personally think from my research that the time line does not support your contentions that this was a study designed around the SMA requirements. **23.10**

Misidentification of Bulkheads I am not finding any evidence in your email that you have answered what the methodology distinguished between what is a shoreline armoring and what it not. I identified on the GIS map that the surveyors did in fact include raised flower gardens as a form of

shoreline armoring even thought these landscaping items were as far back as 45 feet from the existing OHWM. The Watershed Company, DOE, and the WAC all define what is a bulkhead but you have basically told me, " It is the presence and not the location of shoreline modifications". I interpret this to mean that the term 'bulkhead' has been used loosely to establish and encompass as much shoreline features as possible and allow The Watershed Company to call all the features "shoreline Armoring'. Where is the accountability for accepting this fact. I find this very disingenuous of the planning staff not to acknowledge that there are errors in your justification.

How did Watershed distinguish between a retaining wall and a bulkhead in their report. They specifically mention a bulkhead as something near the water and not something 30 or more feet back from the water. If they in fact did little on site evaluation then they must have relied upon this outdate data you provided them to make these distinctions and your comments lead me to believe that there was no distinction that the surveyors made.

The GIS map that you claim was done in 1999 can easily be documented to show that the study did not distinguish between these concepts as you seem to believe. I have numerous situations documented in my study by overlaying the GIS map with pictures of every single property on Bellevue's portion of Lake Sammamish shorelines that show that obvious errors were made in distinguishing between actual shoreline features and those features located substantially back from the OHWM. This is in direct conflict with what the Watershed Company assumed your data points meant in their report and what they told the planning commissioners and mentioned in their paper point presentation to the public during the open house a couple years ago. I can probably find in the planning commission minutes where someone on the planning staff made a distinction between bulkheads, retaining walls and soft shore stabilization within the context of the shoreline inventory report recommendations.

The draft regulations do not specifically address removing retaining walls and raised flower gardens in the setbacks and vegetation zone so it seems like there is a mixed message that it is ok to include them in the 1999 GIS data that you purport was ok to include. So in essence this makes the shorelines more impacted then they are to support regulations that are not necessary because there is less impact than you believe there is. This problem is exacerbated by the fact that The Watershed Company refers to then as shoreline armoring in their inventory study to make the shoreline look worse than it is. Then we have the DOE focusing pretty much on removing bulkheads while being less concerned about raised flower gardens and retaining walls set back from the OHWM. **23.11**

Where is the Guidance for Establishing Methodology? Another troubling point is that the DOE did not come out with their handbook giving guidance for performing the functions of the shoreline analysis until at least 5 years after the data was collected for use in the armoring study. What methodology was the City of Bellevue surveyors using to inventory the Bellevue and King County shorelines if there was little or no guidance by the DOE at the time? Obviously, the data points projected on the GIS map are all over the place and in many cases do not align with shoreline characteristics as the Bellevue planning department would like to think they do and more importantly, The Watershed Company assumed were accurate and did nothing to verify the accuracy. **23.12**

Comment #23

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Where is the Evidence that Data Collection was Verification and Peer Reviewed? The request for proposal (RFP) produced by Michael Paine did nothing to encourage the selected consultant (The Watershed Company) to verify this data for accuracy so whatever was produced by the inventory report must have relied to some extent on the 1999 data that was gathered. You will note by reading the RFP that the City of Bellevue (addendum 'A') tells the consultant to rely on existing GIS data and resources for interpreting features of the shorelines in the interest of saving time and resources. The Watershed Company only did 'limited' (not 'moderate' as you contend) on-site visits as they have stated in their report. See for yourself and stop putting a spin on that too. **23.13**

I did an inventory of each individual property to create a data base to shows that Watershed's study could not even come close to summarizing the amount of armoring on Lake Sammamish. My investigation of each property was done on the days that the water level of the lake was at the current OHWM 31.76 (27.83) . My results can be documented, reproduced and substantiated fit within the scope of BAS and therefore should either replace the data collected by the City or the City should redo their report in a professional manner and resubmit it with new analysis of iconological function on each and every reach of the shoreline. Without this happening, the existing study is not qualified to be submitted as an exhibit for the SMP of Bellevue by definition of the most current and available science. The Planning staff of Believe has repeatedly tried to undermine my evidence in support of their current study in the interest of time and financial cost to reproduce the inventory study. I find that there is sufficient evidence to show that the planning staff mishandled the RFP process by ignoring the inferior nature of the data that they were handing off to the consultant to analyze. There was enough information about changing the different OHWM and the fact that the City had not annexed half of the Bellevue Shoreline by then to make a reasonable assumption that the data was no longer appropriate to meeting the guidelines of the SMA.

If you want a reality check, just compare the shorelines of both Lake Washington and Lake Sammamish in a boat. You will definitely notice that Lake Sammamish has far more exposed beaches and far less armoring than the Watershed report substantiates at OHWM. The Watershed Company report has both lakes almost equal in percentage (70%+ range). My report has Lake Sammamish at least 50% less than what was reported using the current OWHM and not the one that existed back in 1999. My data would show that at the old OHWM (when the data was gathered) the percentage of shoreline armoring on Lake Sammamish would be below 8%. **23.14**

Why did I ask the Planning Staff to comment on the Methodology used in gathering the data used in The Watershed Report? To point out the obvious; the City's data is corrupt and your explanation (spin)is not support by the above observations. The City of Bellevue cannot comply with the DOE standards for setting a baseline for assessing future impacts to ecological function when the results of the inventory are compromised by the integrity of the data collected. **23.15**

In summary I find substantial evidence to show that the inventory study used faulty data. The

Comment #23

Watershed Company was told by the planning staff to use this data and The Watershed Company by their own admission did little in the way of verifying that the data would substantiate their final conclusions in their report. The Watershed Company in opening paragraphs of their report state the following:

"The City must identify and assemble the most current, accurate and complete scientific and technical information available that is applicable to the issues of concern. To this extent, this shoreline inventory and characterization describes the current regulatory framework surrounding shoreline jurisdiction, inventories existing conditions, assess ecological functions and ecosystem wide processes, and reviews current and potential land uses operating in the City's shoreline jurisdiction. This analysis will serve as the baseline against which the impacts of future development actions in the shoreline will be measured" (The Watershed Company)

If you should read what the City of Burien and Mercer Island have done in response to the DOE insistence for changes to shoreline armoring, you will find that both cities had argued that their inventory study and science do not support greater setbacks and armoring removal. Ironically, the City of Bellevue planning staff is on a coarse to use a very poorly crafted shoreline study to support their regulations on Armoring and setbacks at the detriment of taking away the use of valuable property and the rights of the shoreline owners to use their property in an ecologically sound manner. This is very wrong. The planning staff is not working in good faith to produce reliable data for the Planning Commission to do their job. **23.16** **23.17**

Sincerely,

Dallas J. Evans
22XX W. Lk. Sammamish Pkwy SE
Bellevue WA 98008

From: CDrews@bellevuewa.gov [mailto:CDrews@bellevuewa.gov]
Sent: Friday, April 29, 2011 9:50 AM
To: dallas2254@comcast.net
Subject: Response to your email of March 19, 2011 re: Draft Shoreline Analysis Report

Dallas:

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

I have been asked to respond to your email of March 19, 2011, to David Pyle seeking additional information regarding the methodology and process underlying the City of Bellevue's Draft Shoreline Analysis Report (Jan. 16, 2009) (the "Report"). We are happy to provide you with background on the Report and the process the City of Bellevue used to inventory shoreline armoring along Lake Sammamish. In reviewing your questions, however, it became apparent that some of your questions cannot be addressed because you seek information that the Report was not designed to address. The Report provides a qualitative analysis of Bellevue's shorelines based on existing data. Also, one purpose of the Report is to inventory shoreline characteristics and assess shoreline ecological functions, which is the first step required when updating shoreline master programs. Finally, the Report establishes a baseline for the City against which the no net loss standard and cumulative impacts will be measured.

Please understand that the Report is not designed to inventory individual shoreline properties or determine the extent of any shoreline modifications or armoring as they relate to the ordinary high water mark. It is the presence and not the location of shoreline modifications, although the location may affect the degree of the impact, which affects shoreline ecological functions. Therefore, the purpose of the Report is to review data on a coarse-grained scale by shoreline reach and to provide a qualitative assessment of the extent and types of shoreline modifications, present a large-scale understanding of remaining shoreline ecological functions, inventory shoreline land uses, and identify opportunities for public access to the shoreline and shoreline restoration.

The Washington State Department of Ecology's Guidelines ("Guidelines") instruct the scope and development of the Report. In response to the Guidelines, the inventory includes information on ecosystem-wide processes, characterization of shoreline functions, identification of current and projected shoreline uses and potential uses conflicts, and analysis of opportunities for shoreline restoration and public access. With this understanding of shoreline characteristics and uses, staff could move forward with developing appropriate shoreline environmental designations.

The City contracted with the Watershed Company to prepare the Report. Watershed's duties in preparing the report are described in the Scope of Work provided by the City and approved by Ecology. The Scope of Work incorporates study parameters and data requirements detailed in the Guidelines. The Scope does not require Watershed to perform any independent research as part of developing the Report. Instead, under the Guidelines, Watershed is required to compile all pertinent and reasonably available data, plans, studies, inventories, maps, and other applicable information. To facilitate the acquisition of data, the City mailed a letter requesting data and information to inform the Report to numerous agencies, organizations, and individuals. A copy of the letter is provided in the Report at Appendix A, along with the associated mailing list. A listing of potential data sources is provided in Appendix B. A final list of resources will be provided in the Final Shoreline Analysis Report. Watershed supplemented this information with other resources from the

Comment #23

City, scientific literature, aerial photographs, and modest amounts of field work to verify inventory data.

You inquired about the data collection methods related to shoreline modifications on Lake Washington. Consistent with the Guidelines and scope of work the City provided to Watershed, the consultant relied almost exclusively on existing data from the City and state agencies. This data included GIS data from the Washington State Department of Natural Resources inventorying overwater structures, mapping data from the City characterizing land use patterns, and GIS survey data from the City inventorying and characterizing shoreline modifications.

City survey crews inventoried shoreline armoring using field surveys in late summer and early fall of 1999 using digital survey equipment. The survey was to measure the extent of shoreline armoring to enable analysis of related impacts on shoreline ecological functions, which interested the City because of the potential for takings claims under the federal Endangered Species Act. For the survey, armoring included concrete, metal, and wood bulkheads and rockeries, regardless of relationship to the ordinary high water mark. City staff used a boat for waterside access to properties and located armoring features with a high degree of accuracy. According to survey staff, each point (or location) was shot twice to validate the point. Any point pairs failing to meet 0.10 foot tolerances were rejected and the point was re-acquired. Also, during the survey, staff located stream centerlines and storm drain outfalls. To collect the data, staff used survey grade dual-frequency Trimble 4800 RTK GPS rovers, which were differentially referenced to a continuously operating Trimble 4700 CORS GPS base station receiver with a Trimble Choke Ring Antenna located at the Leavitt Building.

For its analysis, Watershed also used aerial photography, which the City updates approximately every three years, and conducted limited field visits in the spring of 2008. Based on its analysis of available data received from state agencies, the City, and review of relevant scientific literature, Watershed characterized the shorelines of Lake Sammamish as having low to moderate ecological functions, thus supporting the environmental designation of Shoreline Residential for those portions of Lake Sammamish within the City. This designation benefits shoreline property owners because it is one of the least restrictive among the shoreline environmental designations in Bellevue, and accommodates residential development and corresponding accessory structures and recreational uses.

I trust you find this information helpful. Please feel free to contact me if you have additional questions.

Sincerely,

Catherine A. Drews

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Catherine A. Drews
Legal Planner
Development Services
City of Bellevue
450 110th Ave. NE
P.O. Box 90012
Bellevue, WA 98009
Phone: 425-452-6134
Fax: 425-452-5225
cdrews@bellevuewa.gov
-.-.-.

Comments reflect PowerPoint

Dallas Evans,	attended the May 21, 2009, open house on the Shoreline Master Program update process. At that meeting it was learned that a shoreline inventory and analysis had been completed to establish a baseline for future development actions in the shoreline jurisdiction. He said he was bothered by the findings of the report and after some research discovered that the city was focused on reducing costs in terms of how to assimilate the data and give it to the consultant, The Watershed Company. He said he has lived on the lake for 17 years and has constructed three homes on the lake, and said he knew very well that the lake was not 71 percent armored as the report claimed. There is a lot of armoring on Lake Washington, but not on Lake Sammamish. He said he requested from staff the research or whatever was used by The Watershed Company to determine their findings and was told that they had relied heavily on GIS data collected by the Department of Natural Resources and city staff. He showed the Commission the map data downloaded from the state indicating the location of boulders and vertical bulkheads. In the small print it indicated that additional site evaluations may be needed to confirm or verify information shown on the map. He said he conducted a site-by-site inventory of the lakeshore beginning on February 9, 2010, during which time the lake level stood exactly at its ordinary high water mark. He said he found that actual shoreline conditions did not match the mapped conditions and that in fact the amount of armoring claimed to exist does not in fact exist. In his study, only 36.4 percent of the shoreline is armored. The placement of the ordinary high water mark is crucial. In 1999, it was 27 feet NGVD-29, or 30.59 feet NAVD-88. In August 2004 a report from The Watershed Company convinced the city that the ordinary high water mark should be raised to 28.17 NGVD-29, or 31.76 NAVD-88. The data points taken in 1999 should have been lower from what it is currently, so 13.4 feet was given up because of the setback.	**23.18** **23.19** **23.20** **23.21**

Shoreline Armoring

Does this impact our shoreline setbacks?

Presented by
Dallas J. Evans
22XX W. Lk. Sammamish Pkwy SE

Existing Shoreline Conditions and Current Science

City of Bellevue

Open House

May 21, 2009

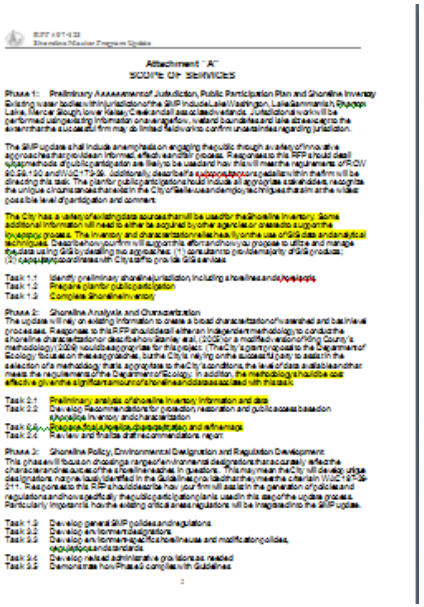
THE WATERSHED COMPANY

Bellevue's Inventory & Analysis Report

- Updated SMP must result in no net loss of ecological functions when implemented
- Inventory/Analysis Report establishes baseline from which future development actions in the shoreline will be measured

THE WATERSHED COMPANY

Attachment "A"
SCOPE OF SERVICES



Attachment "A"
SCOPE OF SERVICES

Phase 1: Preliminary Assessment of Jurisdiction, Public Participation Plan and Shoreline Inventory
Existing water bodies within jurisdiction of the SMP include Lake Washington, Lake Sammamish, Phantom Lake, Mercer Slough, Lower Kelsey Creek and all associated wetlands. Jurisdictional work will be performed using existing information on aerial photos, wetland boundaries and lake shorelines to the extent that the successful firm may do limited field work to confirm uncertainties regarding jurisdiction.

The SMP update shall include an emphasis on engaging the public through an array of innovative approaches that provide an informed, effective and fair process. Responses to this RFP should detail which methods of public participation are likely to be used and how this will meet the requirements of RCW 90.58.130 and WAC 173-26. Additionally, describe the approach or approaches within the firm will be directing this task. The plan for public participation should include all appropriate stakeholders, recognize the unique circumstances here within the City of Bellevue and employ techniques that aim at the widest possible level of participation and comment.

The City has a variety of existing data sources that will be used for the shoreline inventory. Some additional information will need to either be acquired by other agencies or created to support the inventory process. The inventory and characterization relies heavily on the use of GIS data and analytical techniques. Describe how your firm will support this effort and how you propose to utilize and manage the data using GIS by detailing the approaches: (1) consultant to provide majority of GIS products; (2) approach to coordinate with City staff to provide GIS services.

Task 1.1 Identify preliminary shoreline jurisdiction, including shorelines and wetlands
Task 1.2 Prepare plan for public participation
Task 1.3 Complete Shoreline inventory

Phase 2: Shoreline Analysis and Characterization
The update will rely on existing information to create a broad characterization of watershed and basin level processes. Responses to this RFP should detail either an independent methodology to conduct the shoreline characterization or describe how Stanley et al. (2005) or a modified version of King County's methodology (2004) would be appropriate for this project. The City is open to proposals to the Department of Ecology to focus on these approaches, but the City is relying on the successful party to assist in the selection of a methodology that is appropriate to the City's conditions, the level of data available and that meets the requirements of the Department of Ecology. In addition, the methodology should be cost effective given the significant amount of shoreline and data associated with this task.

Task 2.1 Preliminary analysis of shoreline inventory information and data
Task 2.2 Develop Recommendations for protection, restoration and public access based on watershed inventory and characterization
Task 2.3 Prepare draft shoreline characterization and refine maps
Task 2.4 Review and finalize draft recommendations report

Phase 3: Shoreline Policy, Environmental Designation and Regulation Development
This phase will focus on choosing a range of environmental designations that accurately reflect the characteristics and sensitivities of the shoreline areas in question. This may mean the City will develop unique designations not previously identified in the Guidelines provided that they meet the criteria in WAC 173-26-211. Responses to this RFP should describe how your firm will assist in the generation of policies and regulations and how specifically the public participation plans used in this step of the update process. Particularly important is how the existing critical areas regulations will be integrated into the SMP update.

Task 3.1 Develop general SMP policies and regulations
Task 3.2 Develop environment designations
Task 3.3 Develop environment-specific shoreline use and modification policies, regulations and standards
Task 3.4 Develop revised administrative provisions as needed
Task 3.5 Demonstrate how Phase 3 complies with Guidelines

The inventory and characterization relies heavily on the use of GIS data and analytical techniques…..the methodology should be 'cost effective' given the significant amount of shoreline and data associated with this task.

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

SHORELINE ANALYSIS REPORT
(Lake Sammamish)

"As expected, a majority of the shoreline has been altered with either vertical or boulder bulkheads. The extensive amount of residential development has resulted in 71 percent armoring along the shoreline."

The Watershed Company

cover of approximately 39 percent, are approximately 5 percent lower than residential areas along Lake Washington (~44%).

Table 22. Lake Sammamish Impervious Surface and Vegetative Cover by Shoreline Reach.

Shoreline	Total Impervious Area (acres)	% Impervious Surface	Total Vegetative Area (acres)	% Vegetative Cover
Residential (Reach 33)	14.1	43	19.4	59
Residential (Reach 34)	5.7	32	9.4	54
Residential (Reach 35)	18.1	38	25.5	54
Vasa Park (Reach 36)	0.5	18	1.9	65
Residential (Reach 37)	7.8	42	9.8	53
TOTAL	46.2	39	66.0	55

4.3.5 Shoreline Modifications

A combination of recent aerial photographs and brief field visits conducted in Spring 2008 were used to collect information about shoreline modifications along the Lake Sammamish shoreline (Appendix D, Figures 7a through 7e, Tables 23 and 24).

As expected, a majority of the shoreline has been altered with either vertical or boulder bulkheads. The extensive amount of residential development has resulted in 71 percent armoring along the shoreline. Also, as expected, the shoreline contains a large number of overwater structures (326) resulting in a high number per mile (approximately 65 structures per mile). This can be attributed to the presence of individual piers/docks on a majority of the residential properties. There are approximately 364 parcels with some lakeshore frontage along Lake Sammamish. Thus, there are approximately 38 lots without a pier or dock structure. However, this number does not account for shared recreational lots or lots with joint- or multi-family use structures.

Table 23. Lake Edge Condition along Lake Sammamish.

Lake Edge Condition (feet / % of shoreline)			
Vertical[1]	Boulder[2]	% Total Armoring	% Natural / Semi-Natural[2]
13,884 53%	4,711 18%	71	29%

[1] "Vertical" shorelines encompass concrete, wood and mortared boulder armoring types. The key characteristic, besides a generally vertical orientation, is the lack of interstitial spaces in the face of the bulkhead that could provide some habitat.
[2] "Boulder" shorelines are typically angular or rounded granite or basalt. They may be vertical or sloped, but they all contain interstitial spaces, which provide some habitat and may absorb or attenuate some wave energy.

Comment #23

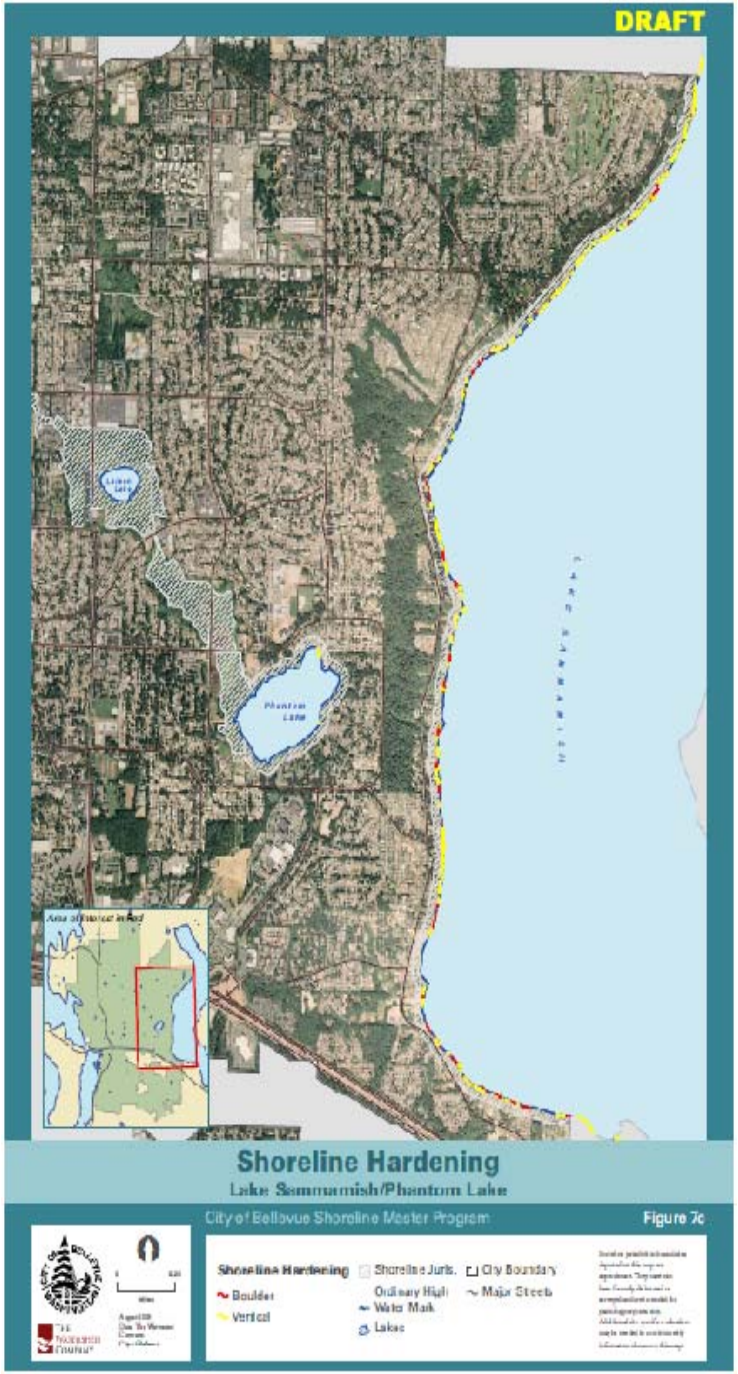
Lake Sammamish Constraints

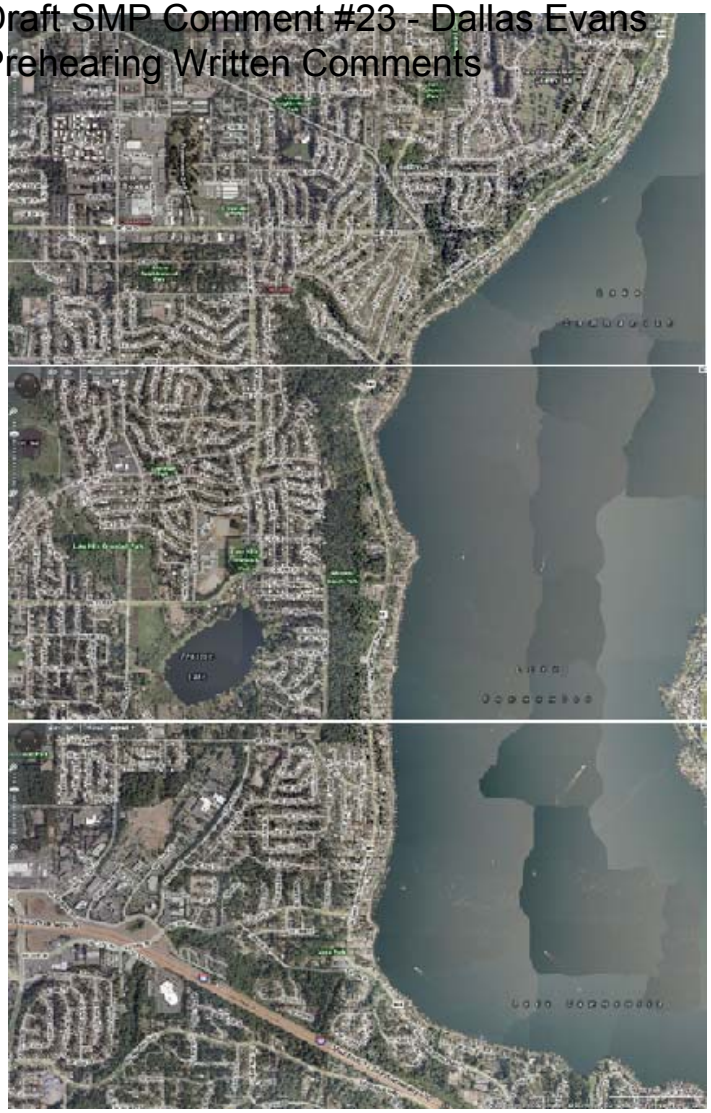
- 71% armored
- High pier density
- Riparian vegetation dominated by lawn
- Limited public access

- Aquatic invasive species problem in some areas

THE WATERSHED COMPANY

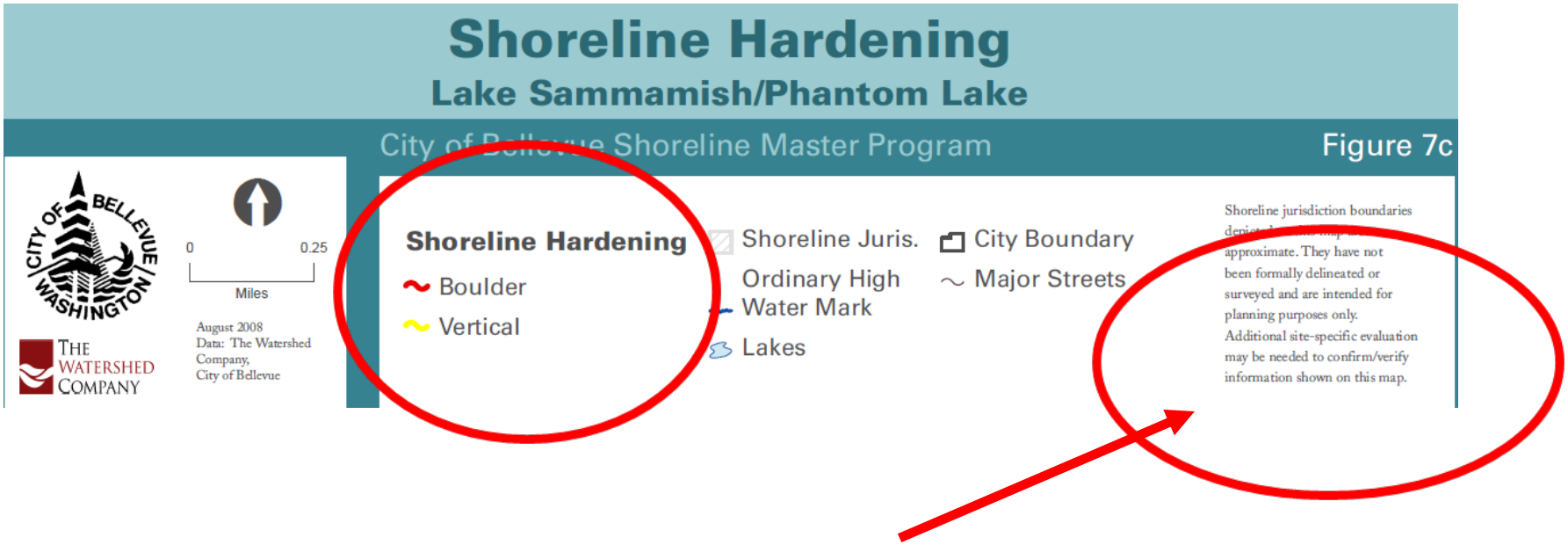
Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments





Comment #23

Legend and the small print



Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Waterfront
Location LAKE SAMM
Footage 50
Bank LOW

17133 SE 35TH ST

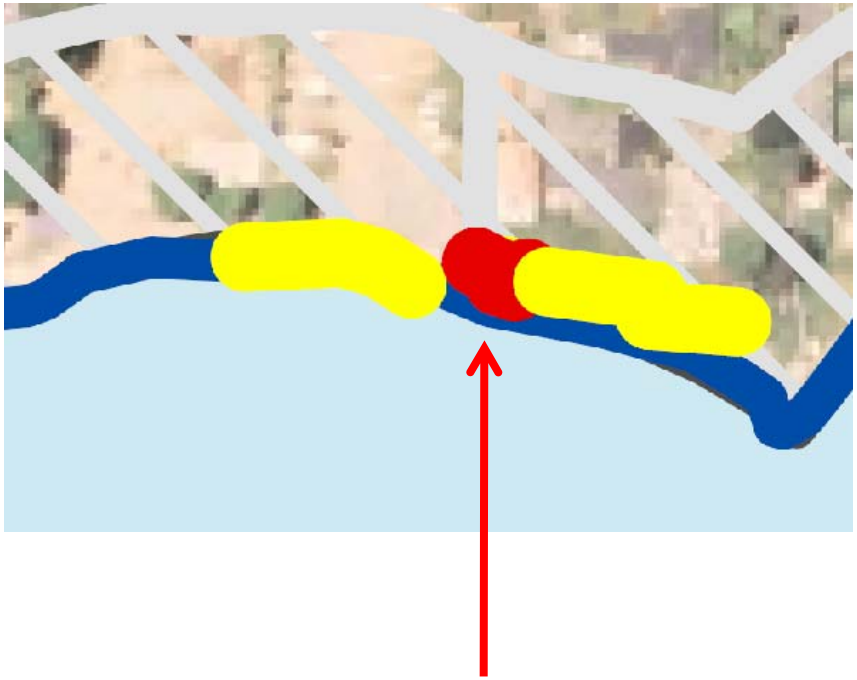
Summer Lake Level

Winter Lake Level

Comment #23

17133 SE 35TH ST

07c_shoreline_hardening_lake_sam_phantom.pdf



BING MAP birds eye view

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Waterfront
Location LAKE SAMM
Footage 50
Bank NO

Did they miss any Shoreline Armoring?

3418 WEST LAKE SAMMAMISH PKWY SE

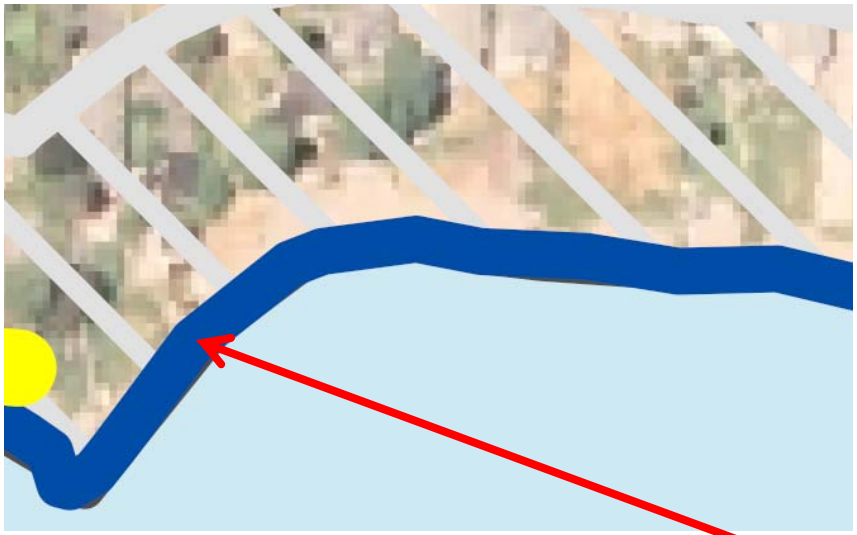
Summer Lake Level

Winter Lake Level

Comment #23

3418 WEST LAKE SAMMAMISH PKWY SE

07c_shoreline_hardening_lake_sam_phantom.pdf



BING MAP birds eye view

Missed one !

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

King County Deeded Vegetation Buffer (pre 1999)

Waterfront
Location LAKE SAMM
Footage 67
Bank NO

3210 WEST LAKE SAMMAMISH PKWY SE

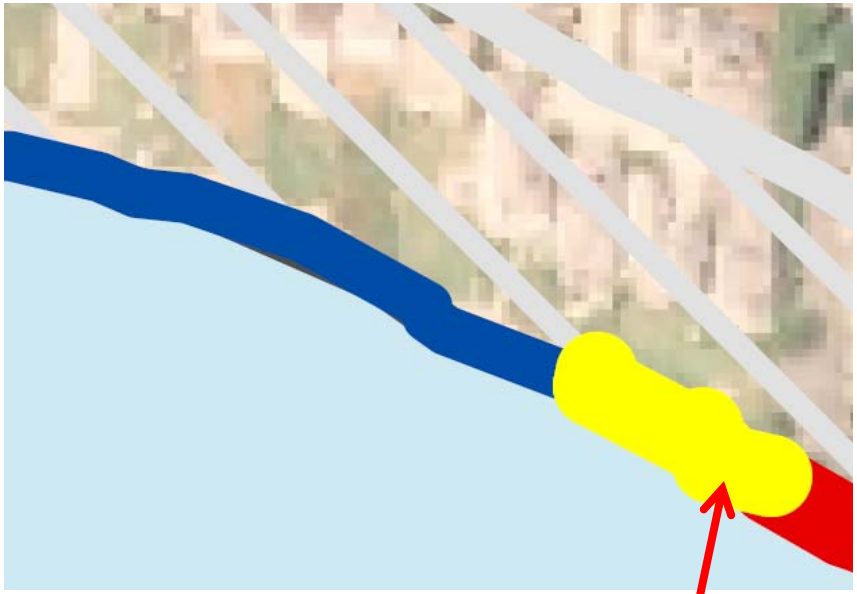
Summer Lake Level

Winter Lake Level

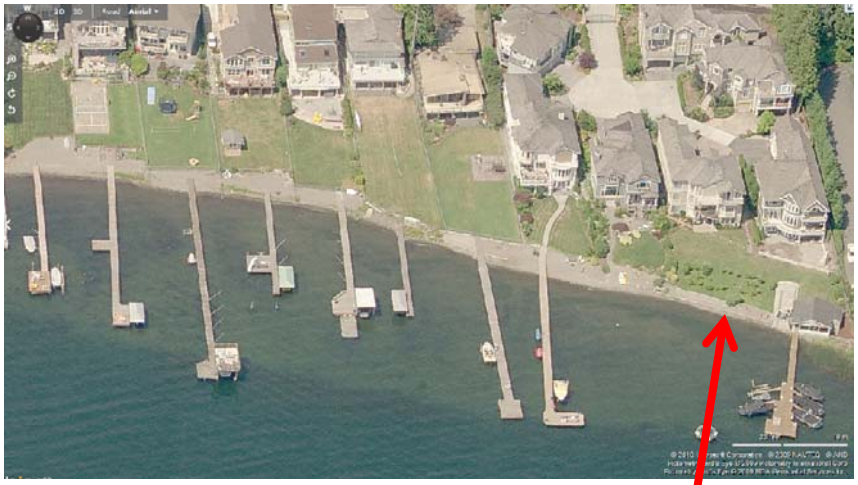
Comment #23

3210 WEST LAKE SAMMAMISH PKWY SE

07c_shoreline_hardening_lake_sam_phantom.pdf



BING MAP birds eye view



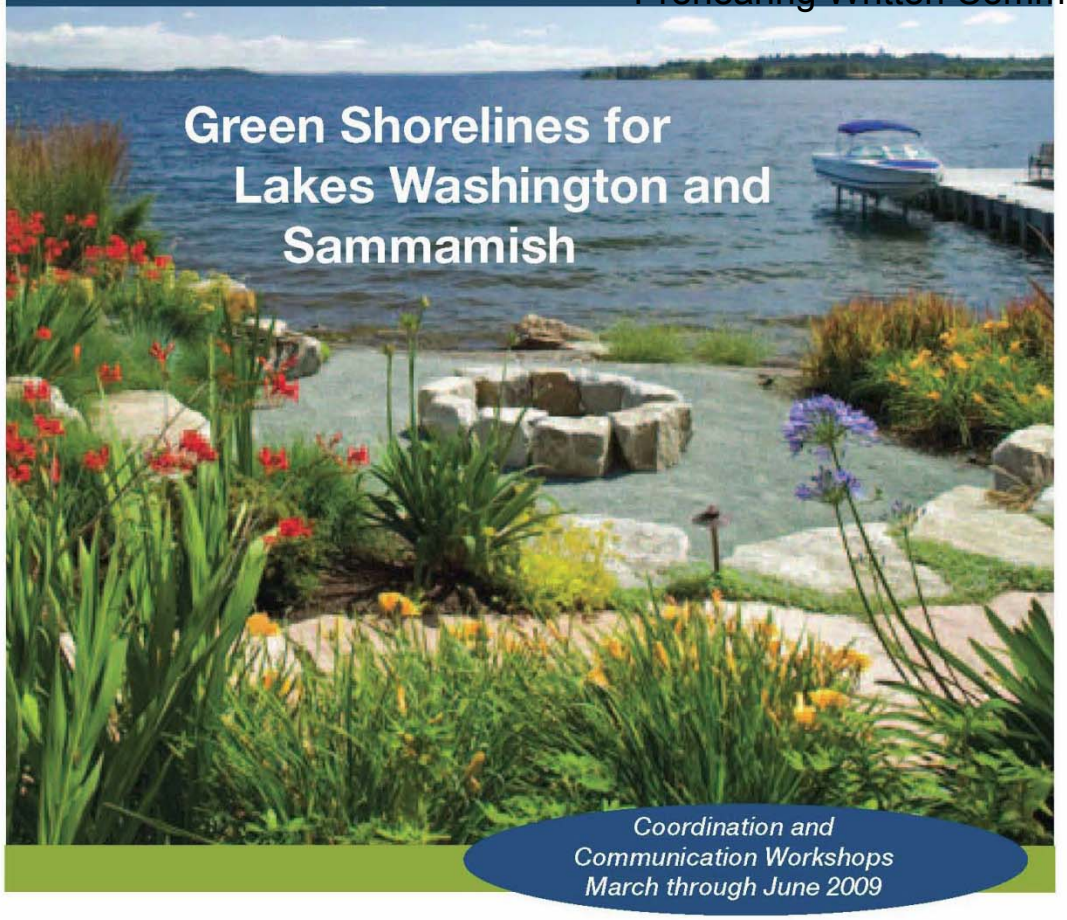
REJECTED!
How did this happen ?

Comment #23

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

SUMMARY REPORT

Green Shorelines for Lakes Washington and Sammamish



Coordination and Communication Workshops March through June 2009

WASHINGTON STATE Governor's Office of Regulatory Assistance

RESTORE OUR WATERS

LAKE WASHINGTON CEDAR SAMMAMISH WATERSHED

DEPARTMENT OF ECOLOGY State of Washington

NOAA

PugetSoundPartnership
our sound, our community, our chance

City of Seattle

Comment #23

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Green Shorelines for Lake Sammamish

Waterfront
Location LAKE SAMM
Footage 75
Bank MEDIUM

2824 WEST LAKE SAMMAMISH PKWY SE

Summer Lake Level

Winter Lake Level

Comment #23

2824 WEST LAKE SAMMAMISH PKWY SE

07c_shoreline_hardening_lake_sam_phantom.pdf

BING MAP birds eye view

Bummer! Did not see that one coming

100 year flood Zone issues

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

2010 W LAKE SAMMAMISH PKWY SE

Waterfront
Location LAKE SAMM
Footage 63
Bank LOW

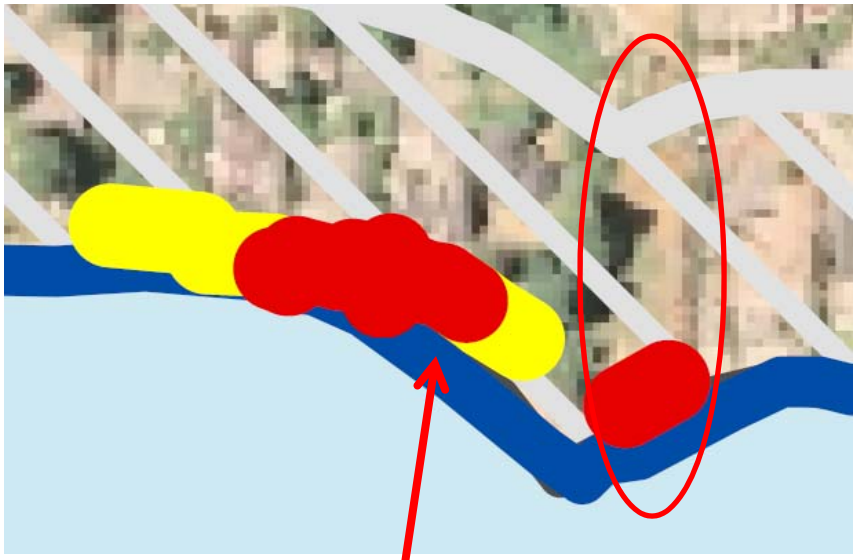
Summer Lake Level

Winter Lake Level

Comment #23

2010 W LAKE SAMMAMISH PKWY SE & 1864 WEST LAKE SAMMAMISH PKWY SE

07c_shoreline_hardening_lake_sam_phantom.pdf



BING MAP birds eye view

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Waterfront
Location LAKE SAMM
Footage 95
Bank LOW

1238 WEST LAKE SAMMAMISH PKWY SE

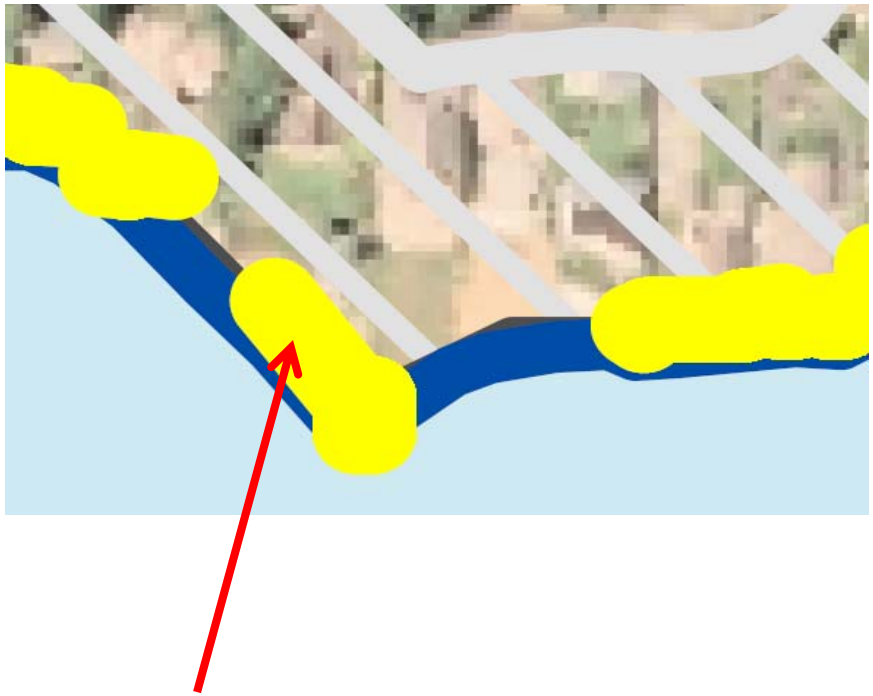
Summer Lake Level

Winter Lake Level

Comment #23

1238 WEST LAKE SAMMAMISH PKWY SE

07c_shoreline_hardening_lake_sam_phantom.pdf



BING MAP birds eye view

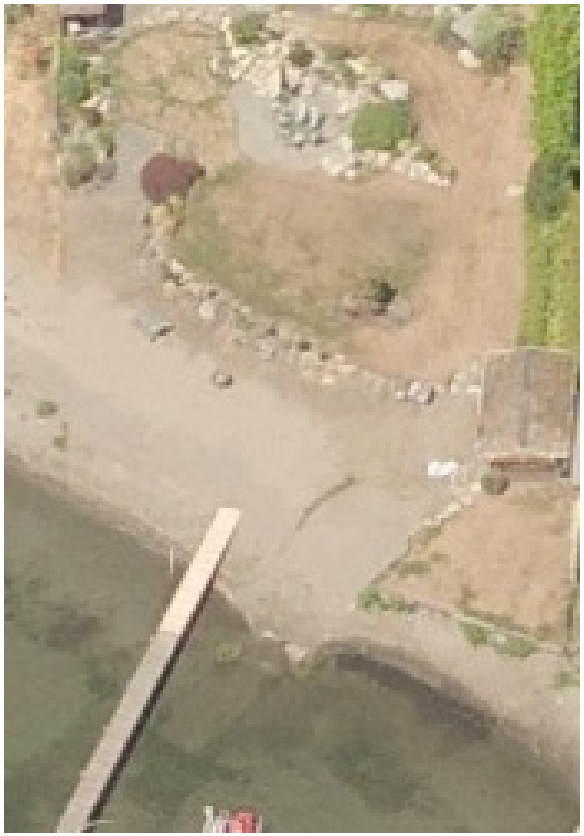
Another Example of Soft Shore Stabilization practices

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Waterfront
Location LAKE SAMM
Footage 90
Bank NO

250 WEST LAKE SAMMAMISH PKWY SE

Summer Lake Level

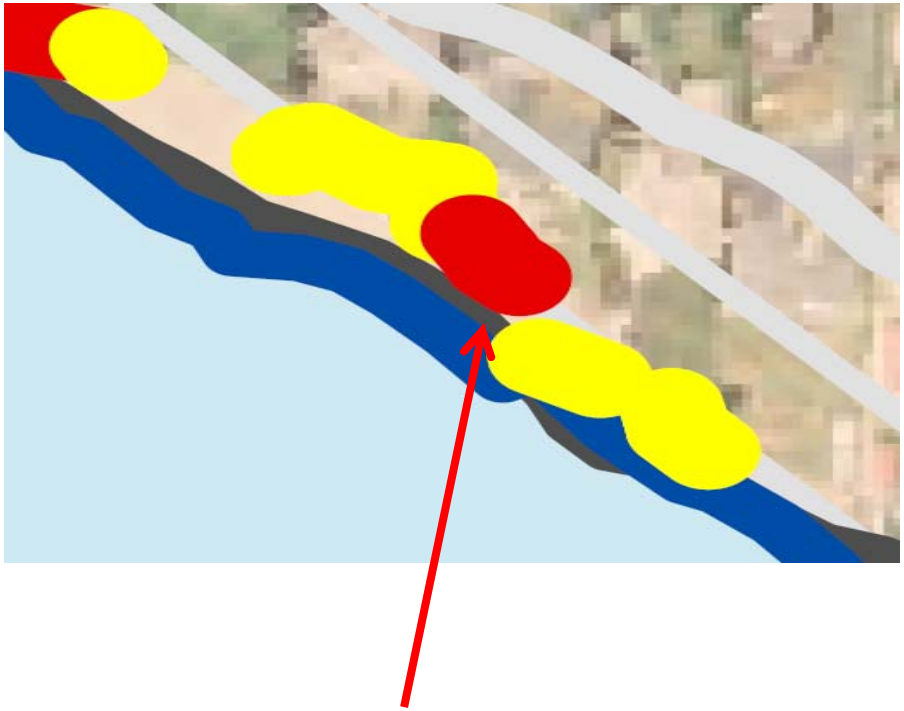


Winter Lake Level

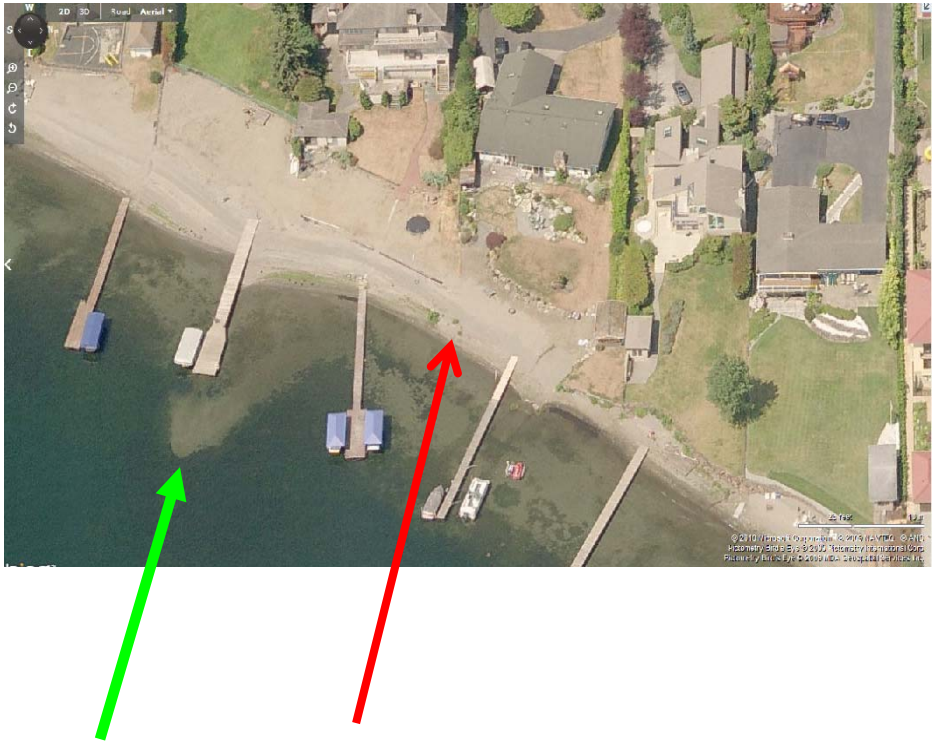
Comment #23

250 WEST LAKE SAMMAMISH PKWY SE

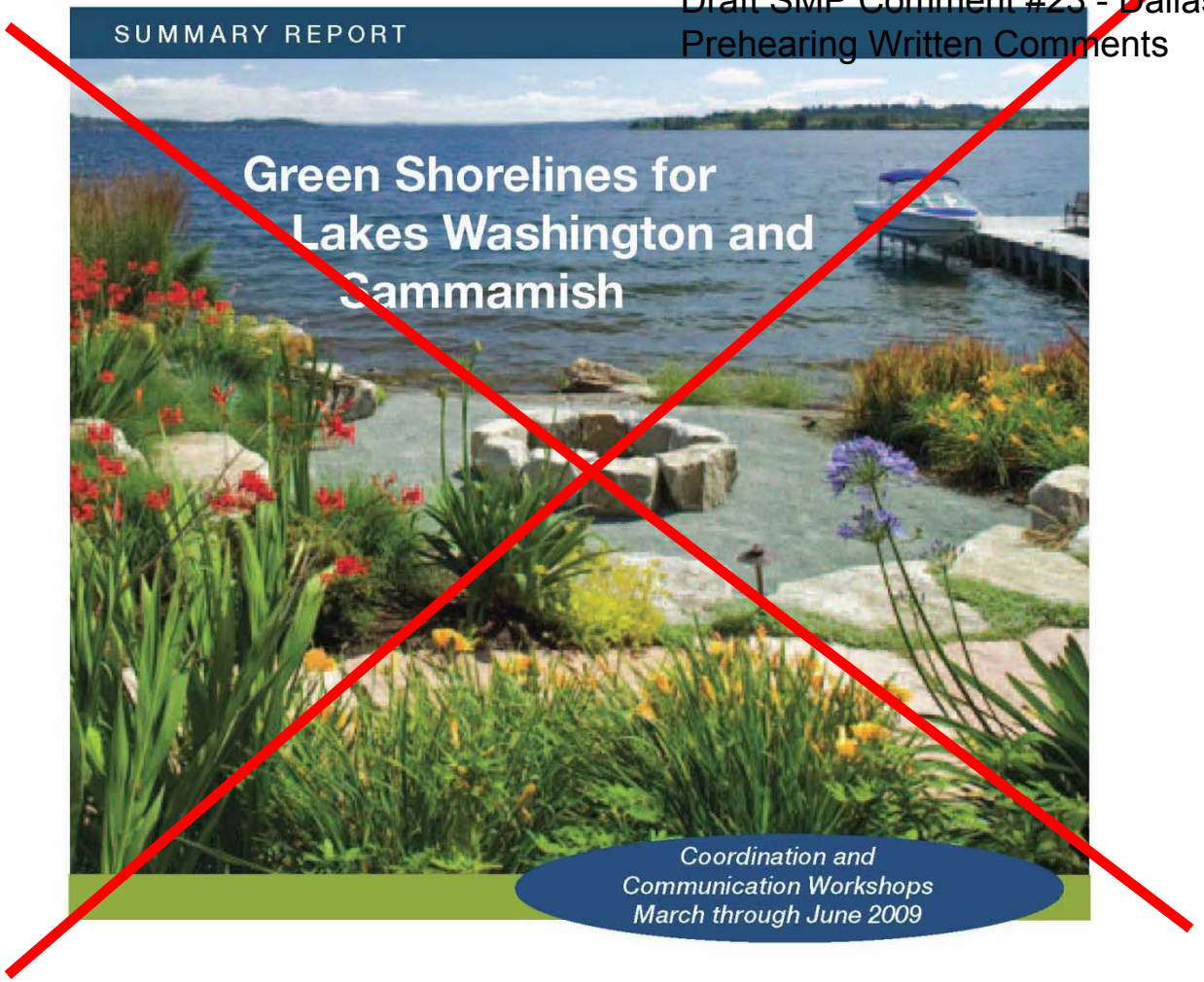
07c_shoreline_hardening_lake_sam_phantom.pdf



BING MAP birds eye view



Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments



WASHINGTON STATE Governor's Office of Regulatory Assistance

RESTORE OUR WATERS

LAKE WASHINGTON CEDAR SAMMAMISH WATERSHED

DEPARTMENT OF ECOLOGY State of Washington

NOAA

PugetSoundPartnership
our sound, our community, our chance

City of Seattle

Comment #23

My personal favorite beach

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Waterfront
Location LAKE SAMM
Footage 125
Bank LOW

380 WEST LAKE SAMMAMISH PKWY NE

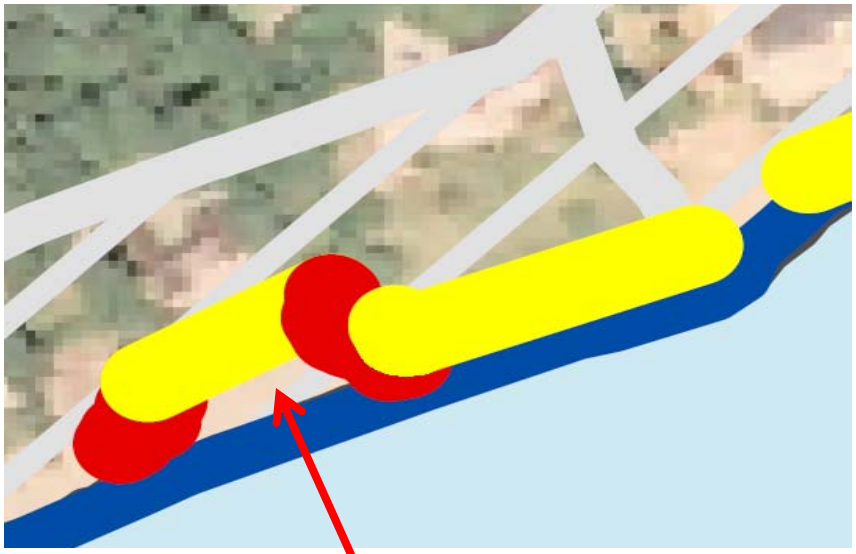
Summer Lake Level

Winter Lake Level

Comment #23

380 WEST LAKE SAMMAMISH PKWY NE

07c_shoreline_hardening_lake_sam_phantom.pdf



BING MAP birds eye view

REJECTED!

Lake Sammamish Total Waterfront Footage Bellevue	Exposed Beach Footage	Exposed Rockery Footage	Exposed Vertical Wall Footage	Exposed OHW Beach Footage	Exposed OHW Rockery Footage	Exposed OHW Vertical Wall Footage
24,698	22863	522	1313	15719	2515	6464
	92.6%	2.1%	5.3%	63.6%	10.2%	26.2%
Percent of Armoring			7.4%			36.4%
Scope of project: A complete inventory using aerial, ground, and public records was used to compiled all data. Photos of every shoreline were taken at both low and OHW and all data was logged in a spread sheet.			Summer Shoreline Armoring			~ OHWM 2/09/2009 27.35 feet NGVD 1929

This is not even close to 71% Shoreline Armoring

Comment #23

Ordinary High Water Mark

- Is the placement of the OHWM crucial to locating Shoreline Armoring?
- What was the OHWM in 1999?
- What is the OHWM today?

Ordinary High Water Mark

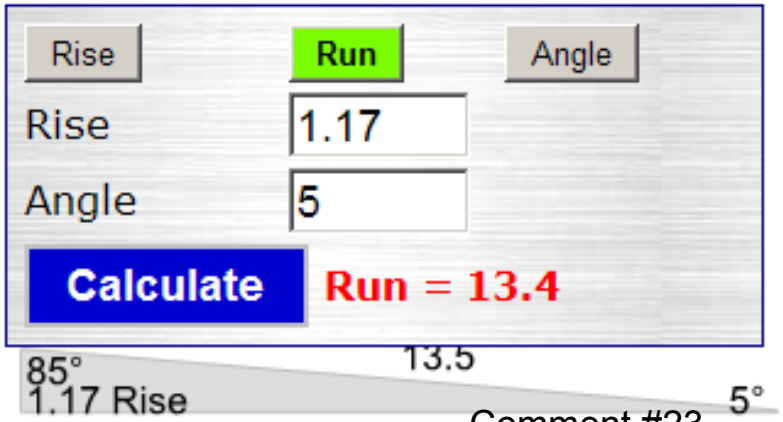
- 1999 = 27.00’ or 30.59’ (NGVD 29 or NAVD 88)
- August 2004 The Watershed Company recommends the city change the OHWM on Lake Sammamish (now being contested)
- 2005 = 28.17’ or 31.76’

Problem !

- Data points taken in 1999 would have marked the OWHM at a lower level than may study.

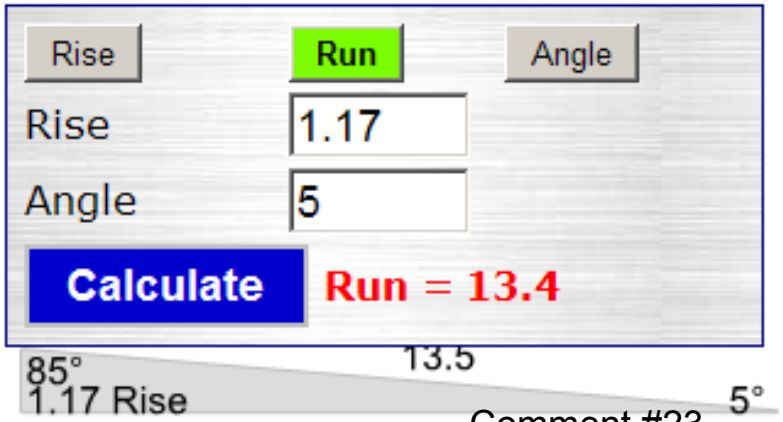
Problem !

- Data points taken in 1999 would have marked the OWHM at a lower level than may study.
- Elevating the OHWM by 14 inches = 13.4 feet of additional setback at 5% grade



Problem !

- Data points taken in 1999 would have marked the OWHM at a lower level than may study.
- Elevating the OHWM by 14 inches = 13.4 feet of additional setback at 5% grade
- My study would have shown less than 20% armoring along the shoreline at the 1999 OHWM



Does the Draft Shoreline Analysis Report characterize the Bellevue shorelines accurately?

What is Shoreline Armoring?

"Shoreline armoring typically consists of rock, concrete, or wood bulkheads positioned at or near the OHWM of a water body."

The Watershed Company August 2008

DRAFT
SHORELINE INVENTORY REPORT –
Technical Appendix Volume II - Habitat
City of Bellevue's Shorelines: Lake Washington, Lake Sammamish, Phantom Lake, Kelsey Creek and Mercer Slough

City of Redmond

"A bulkhead by its very nature is located at the OHWM. Their main purpose is to act as structural armoring against the erosive power of waves and current for protecting an existing structure. A wall-type structure located elsewhere in the lakefront setback that does not provide these functions would not be regulated as a bulkhead. Retaining walls would be a structure whose purpose is to retain a soil column that is located landward of any shoreline process."

Catherine A. Beam, principle Environmental Planner,

Department of planning and Community Development

City of Bellevue

"The Report is not designed to inventory individual shoreline properties or determine the extent of any shoreline modifications or armoring as they relate to the ordinary high water mark. It is the presence and not the location of shoreline modifications, although the location may affect the degree of the impact, which affects shoreline ecological functions."

Catherine A. Drews, Legal Planner Development Services, City of Bellevue
April 29, 2011

- Was the data collection and survey data methods consistent with the DOE guidelines?

- "The Washington State Department of Ecology's Guidelines ("Guidelines") instruct the scope and development of the Report"
- "City survey crews inventoried shoreline armoring using field surveys in late summer and <u>early fall of 1999</u> using digital survey equipment. The survey was to measure the extent of shoreline armoring to enable analysis of related impacts on shoreline ecological functions."

Catherine A. Drews, Legal Planner Development Services, City of Bellevue

April 29, 2011

- “City staff used a boat for waterside access to properties and located armoring features with a high degree of accuracy. ”

Catherine A. Drews, Legal Planner Development Services, City of Bellevue

April 29, 2011

Problem!

- DOE guidelines were not published before 2003
- Study was done in 1999
- The OHWM was 13 feet further toward the lake than it is now.
- How is it that 71% armoring was detected

How does the DOE describe Shoreline Armoring in the guidelines?

- Exacerbation of erosion. The hard face of shoreline armoring, particularly concrete bulkheads, reflects wave energy back onto the beach, exacerbating erosion.
- Hydraulic impacts. Shoreline armoring generally increases the reflectivity of the shoreline and redirects wave energy back onto the beach.

Washington State Shoreline Master Program Guidelines (2003),

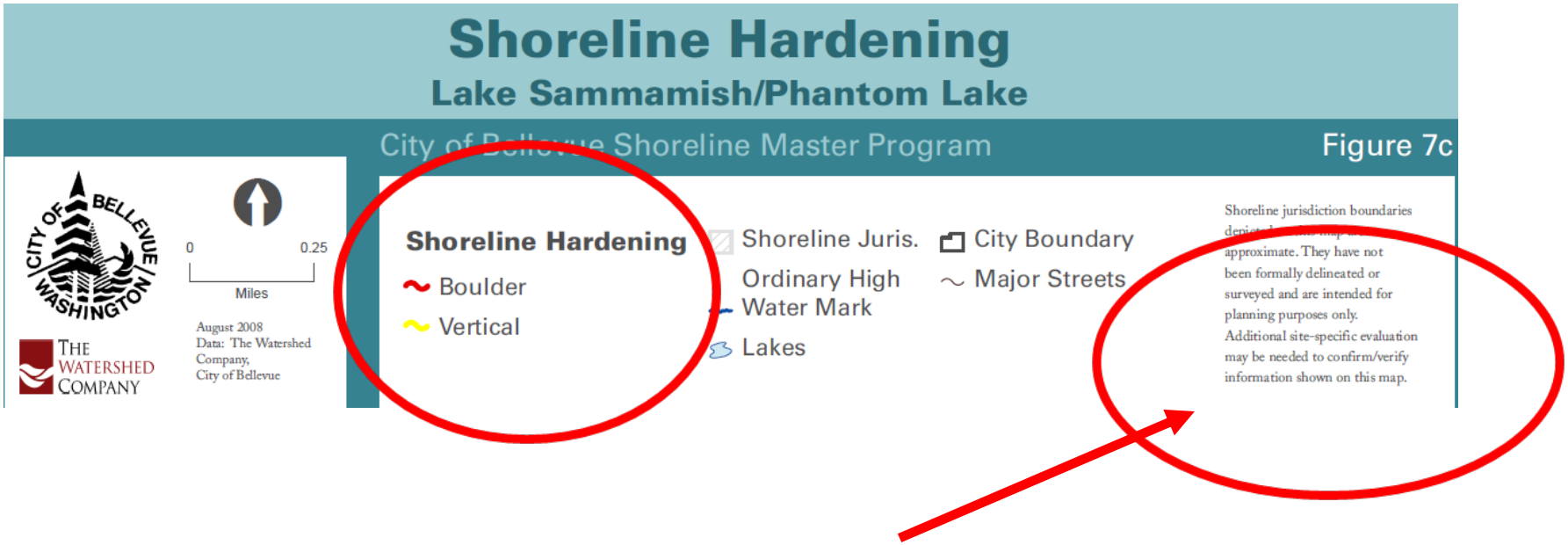
Chapter 173-26 WAC

Is there a fiduciary standard that the City of Bellevue Planning staff or the Consultant has, to make sure that the data used in the inventory study has been peer reviewed for accuracy?

"The Scope does not require Watershed to perform any independent research as part of developing the Report."

Catherine A. Drews, Legal Planner Development Services,
City of Bellevue
April 29, 2011

Legend and the small print



Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

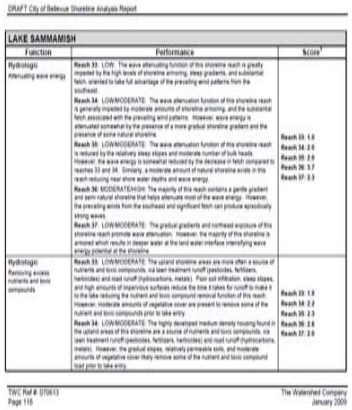
"The City must identify and assemble the most current, accurate and complete scientific and technical information available that is applicable to the issues of concern."

The Watershed Company

Does The Watershed Company report have potential for biased assessments and proposed policy statements that the Planning Staff will later use for the SMP?

Hydrologic

Attenuating wave energy



DRAFT City of Bellevue Shoreline Analysis Report

LAKE SAMMAMISH

Function	Performance	Score[1]
Hydrologic Attenuating wave energy	Reach 33: LOW: The wave attenuating function of this shoreline reach is greatly impeded by the high levels of shoreline armoring, steep gradients, and substantial fetch, oriented to take full advantage of the prevailing wind patterns from the southeast. Reach 34: LOW/MODERATE: The wave attenuation function of this shoreline reach is generally impeded by moderate amounts of shoreline armoring, and the substantial fetch associated with the prevailing wind patterns. However, wave energy is attenuated somewhat by the presence of a more gradual shoreline gradient and the presence of some natural shoreline. Reach 35: LOW/MODERATE: The wave attenuation function of this shoreline reach is reduced by the relatively steep slopes and moderate number of bulk heads. However, the wave energy is somewhat reduced by the decrease in fetch compared to reaches 33 and 34. Similarly, a moderate amount of natural shoreline exists in this reach reducing near shore water depths and wave energy. Reach 36: MODERATE/HIGH: The majority of this reach contains a gentle gradient and semi natural shoreline that helps attenuate most of the wave energy. However, the prevailing winds from the southeast and significant fetch can produce episodically strong waves. Reach 37: LOW/MODERATE: The gradual gradients and northeast exposure of this shoreline reach promote wave attenuation. However, the majority of this shoreline is armored which results in deeper water at the land water interface intensifying wave energy potential at the shoreline.	Reach 33: 1.0 Reach 34: 2.0 Reach 35: 2.0 Reach 36: 3.7 Reach 37: 2.3
Hydrologic Removing excess nutrients and toxic compounds	Reach 33: LOW/MODERATE: The upland shoreline areas are more often a source of nutrients and toxic compounds, via lawn treatment runoff (pesticides, fertilizers, herbicides) and road runoff (hydrocarbons, metals). Poor soil infiltration, steep slopes, and high amounts of impervious surfaces reduce the time it takes for runoff to make it to the lake reducing the nutrient and toxic compound removal function of this reach. However, moderate amounts of vegetative cover are present to remove some of the nutrient and toxic compounds prior to lake entry. Reach 34: LOW/MODERATE: The highly developed medium density housing found in the upland areas of this shoreline are a source of nutrients and toxic compounds, via lawn treatment runoff (pesticides, fertilizers, herbicides) and road runoff (hydrocarbons, metals). However, the gradual slopes, relatively permeable soils, and moderate amounts of vegetative cover likely remove some of the nutrient and toxic compound load prior to lake entry.	Reach 33: 1.0 Reach 34: 2.2 Reach 35: 2.3 Reach 36: 2.8 Reach 37: 2.0

TWC Ref # 070413
Page 118

The Watershed Company
January 2009

The wave attenuating function of this shoreline reach is greatly impeded by the high levels of shoreline armoring,…

The wave attenuation function of this shoreline reach is generally impeded by moderate amounts of shoreline armoring,…

The wave attenuation function of this shoreline reach is reduced by the relatively steep slopes and moderate number of bulk heads.

However, the majority of this shoreline is armored……

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Hydrologic
Recruitment of LWD and other organic material

The general lack of stream input, heavily armored shorelines, and lack of trees in close proximity to the shoreline greatly reduce the potential for hydrologic recruitment of organic material in this shoreline reach.

Reduced shoreline armoring in this reach and the presence of a few small streams increases the potential for hydrologic recruitment of organic material to the lake.

Large amounts of shoreline armoring,..

Hydrologic Recruitment of LWD and other organic material	**Reach 33:** LOW/MODERATE: The general lack of stream input, heavily armored shorelines, and lack of trees in close proximity to the shoreline greatly reduce the potential for hydrologic recruitment of organic material in this shoreline reach. Dense residential shoreline zone development, including shorefront armoring modifications, restrict the ability of the lake to recruit LWD and organic material. Essentially all of the primordial lakeshore forest vegetation has been removed, and so is not available for recruitment, and re-growth has been limited and patchy as a result of development. **Reach 34:** LOW/MODERATE: Reduced shoreline armoring in this reach and the presence of a few small streams increases the potential for hydrologic recruitment of organic material to the lake. However, the dense residential shoreline zone development restrict the ability of the lake to recruit LWD and organic material due to the removal of vegetation in close proximity to the water. **Reach 35:** LOW/MODERATE: Hydrologic recruitment of organics in this reach is facilitated by the presence of some small streams associated with Weowna Park. Similarly, the moderate levels of armoring along the shoreline should facilitate hydrologic recruitment of organic material. However, The dense residential shoreline	**Reach 33: 2.0** **Reach 34: 2.3** **Reach 35: 2.0** **Reach 36: 2.5** **Reach 37: 2.0**

The Watershed Company
January 2009

TWC Ref #: 070613
Page 119

	zone developments, including some shorefront armoring modifications, restrict the ability of the lake to recruit LWD and organic material, and re-growth of vegetation has been limited and patchy as a result of development. **Reach 36:** LOW/MODERATE: The lake likely receives a moderate amount of organic materials from this reach via windfall from the deciduous trees found in the area. However wind is not a hydrologic factor. LWD recruitment is limited by the lack of trees in close proximity to the shoreline and the low rate of shore erosion. Similarly, the presence of a public swimming beach likely result in the physical removal of any LWD or significant amounts of other types of organic material. Some organic material likely recruits from the northern sections of the park where trees and vegetation are closer to the shoreline. However, this section of shoreline is armored reducing erosion and the likelihood of hydrologic recruitment of organics. **Reach 37:** LOW/MODERATE: Large amounts of shoreline armoring, dense residential shoreline development and the lack of vegetation in close proximity to the shoreline greatly limit recruitment of organic material in this reach. The presence of a few small streams potentially provides some limited organic material recruitment to the lake.	

Comment #23

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Vegetation

Attenuating wave energy

The steep shoreline gradients, heavy armoring, and southeastern exposure of this shoreline reach provides little wave energy attenuation function.

The wave attenuation function of this shoreline reach is generally impeded by moderate amounts of shoreline armoring,…

The wave attenuation function of this shoreline reach is reduced by the relatively steep slopes and moderate number of bulk heads.

However, the majority of this shoreline is armored which results in deeper water at the land water interface intensifying wave energy potential at the shoreline.

LAKE SAMMAMISH

Function	Performance	Score[1]
Vegetation Attenuating wave energy	**Reach 33:** LOW: The steep shoreline gradients, heavy armoring, and southeastern exposure of this shoreline reach provides little wave energy attenuation function. Vegetation does not provide any significant wave attenuation function for most shoreline areas. As mentioned above, bulkheading and other shoreline modifications have replaced native vegetation and natural woody debris as the features in place to attenuate wave energy. **Reach 34:** LOW/MODERATE: The wave attenuation function of this shoreline reach is generally impeded by moderate amounts of shoreline armoring, and the substantial fetch associated with the prevailing wind patterns. However, wave energy is attenuated somewhat by the presence of a more gradual shoreline gradient and the presence of some natural shoreline and aquatic vegetation. **Reach 35:** LOW/MODERATE: The wave attenuation function of this shoreline reach is reduced by the relatively steep slopes and moderate number of bulk heads. However, the wave energy is somewhat reduced by the decrease in fetch compared to reaches 33 and 34. Similarly, a moderate amount of natural shoreline exists in this reach reducing nearshore water depths promoting a limited amount of vegetative growth and wave energy attenuation. **Reach 36:** MODERATE: The majority of this reach contains a gentle gradient and semi natural shoreline that helps attenuate most of the wave energy. However, the absence of dense emergent and submerged vegetation reduces the wave attenuation ability of this shoreline. Prevailing winds from the southeast and significant fetch can produce episodically strong waves along the vegetative and LWD-poor swimming beach. **Reach 37:** LOW/MODERATE: The gradual gradients and northeast exposure of this shoreline reach promote wave attenuation. However, the majority of this shoreline is armored which results in deeper water at the land water interface intensifying wave energy potential at the shoreline. Similarly, the absence of LWD and significant amounts of aquatic vegetation further reduces the wave attenuation function of this shoreline.	**Reach 33:** 1.0 **Reach 34:** 1.8 **Reach 35:** 1.8 **Reach 36:** 3.0 **Reach 37:** 2.0
Vegetation Sediment removal and bank stabilization	**Reach 33:** LOW/MODERATE: Under natural conditions, there would be an ongoing, underlying rate of shoreline erosion, which would contribute to maintaining substrate conditions. Instead, the lake shore in this reach now has little vegetation and a significant proportion of it is armored. While this "stabilizes" the banks, it also limits natural recruitment of lakebed materials. **Reach 34:** LOW/MODERATE: This reach of shoreline is only moderately armored and contains relatively gradual slopes which would naturally promote stable sediments and	**Reach 33:** 1.5 **Reach 34:** 2.4 **Reach 35:** 2.2 **Reach 36:** 3.8 **Reach 37:** 2.3

Comment #23

"Residential shoreline properties along Lake Washington and Sammamish are highly valuable, and these areas are typically armored with bulkheads to reduce erosion caused by waves. "

Prepared by The Watershed Company August 2008

DRAFT
SHORELINE INVENTORY REPORT –
Technical Appendix Volume II - Habitat
City of Bellevue's Shorelines: Lake Washington, Lake Sammamish, Phantom Lake, Kelsey Creek and Mercer Slough

Draft SMP Comment #23 - Dallas Evans
Prehearing Written Comments

Best beaches due to little or no direct wave action. Waves run parallel to beach

Worst beaches due to high erosion from wind waves with large fetch. Little or no sand.

Best waterskiing water during windy days

Bellevue Shorelines

Wind direction out of sammamish watershed area

Comment #23

Does shoreline armoring have any effect on Salmon runs in Lake Sammamish?

- There has been a very insignificant number of bulkheads built on Lake Sammamish in the past 20 years.

Does shoreline armoring have any effect on Salmon runs in Lake Sammamish?

- There has been a very insignificant number of bulkheads built on Lake Sammamish in the past 20 years.
- There is a lot of scientific data to show that fish populations have varied extensively up and down during the past 20 years.

Does shoreline armoring have any effect on Salmon runs in Lake Sammamish?

- There has been a very insignificant number of bulkheads built on Lake Sammamish in the past 20 years.
- There is a lot of scientific data to show that fish populations have varied extensively up and down during the past 20 years.
- Shoreline armoring can not be statistically correlated to these events because of little change in armoring.

Does shoreline armoring have any effect on Salmon runs in Lake Sammamish?

- There has been a very insignificant number of bulkheads built on Lake Sammamish in the past 20 years.
- There is a lot of scientific data to show that fish populations have varied extensively up and down during the past 20 years.
- Shoreline armoring can not be statistically correlated to these events because of little change in armoring.
- Construction of impervious surfaces, deforestation, and the climate changes have stronger correlations to fish returns than Sammamish shoreline setbacks.

How important is the accuracy of this inventory study?

Chapter 173-26 WAC State master program approval/amendment procedures and master program guidelines

- PART III GUIDELINES 173-26-201

- (2) **Basic concepts.**
- (a) **Use of scientific and technical information.** To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process.

1. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science…
2. Local governments shall be prepared to demonstrate how the inventory information was used in preparing their local master program amendments . . .

Local SMP Adoption Process

- the consultant will have a lead role in presenting ecological characterization and other scientific conclusions to the Planning Commission and the City Council. (RFP #07-125)
- Where has our $381,000 consultant been in the Bellevue SMP process?
- The City Staff has demonstrated very little knowledge about Lake Sammamish issues yet they seem to have a good reason for pushing for greater setbacks than any other city around us.

Recent Cities pushing back on DOE

- Burien
- Mercer Island

- WHY?
- Because they have a both cited their Inventory/Analysis Report proves their position that bulkheads are necessary and additional setbacks do not cause ecological function based upon current BAS!

Draft SMP Comment #24 - Dave Douglas
Prehearing Written Comments

From: Inghram, Paul
Sent: Wednesday, May 25, 2011 5:48 PM
To: Bedwell, Heidi
Subject: FW: SMP UPDATE DRAFT CODE COMMENT LETTER FOR THE PLANNING COMMISSION AND PUBLIC RECORD
Attachments: Bellevue SMP Draft Comment Ltr 5-9-2011.docx

From: Dave Douglas [mailto:integritypermitting@hotmail.com]
Sent: Saturday, May 21, 2011 4:43 PM
To: jchriestensen@bellevuewa.gov; PlanningCommission
Subject: SMP UPDATE DRAFT CODE COMMENT LETTER FOR THE PLANNING COMMISSION AND PUBLIC RECORD

Dear City of Bellevue and Planning Commissioners,

I have attached a comment letter on the Bellevue SMP Draft for the Planning Commission. I am requesting that each Planning Commissioner is provided with a copy as soon as possible so they can review it prior to the Public Hearing on May 25th.

Please confirm receipt and forwarding of document to the Planning Commissioners. Thank you very much.

Sincerely,

Dave Douglas
Permit Manager/Shoreline Consultant
Integrity Shoreline Permitting
"Putting the Property Owner First"
integritypermitting@hotmail.com
C: (425) 343-2342

Comment #24

Integrity Shoreline Permitting
Permit Manager/Shoreline Consultant
Professional • Affordable • Reliable
integritypermitting@hotmail.com

Hire a Vet! Integrity Shoreline Permitting is managed by a Retired Veteran with 21 Years of Distinguished Military Service to the United States of America.

May 17, 2011

From: David Douglas, Integrity Shoreline Permitting
To: City of Bellevue Planning Commission

Subj: COMMENTS ON THE CITY OF BELLEVUE DRAFT SMP CODE FOR THE PUBLIC RECORD IN CONJUNCTION WITH THE PUBLIC HEARING OF MAY 25, 2011

Dear Bellevue Planning Commissioners,

Thank you for your work on the City of Bellevue Shoreline Master Program (SMP) Update. In an ongoing commitment to your waterfront property owners and the City itself, and as the owner of Integrity Shoreline Permitting (ISP), I am providing comments on the most current Draft SMP. I am requesting that these comments be included in the public record in conjunction with the Public Hearing of May 25, 2011.

As a Permit Manager and Shoreline Consultant specializing in the design and permitting of new, repair and replacement of residential nearshore and overwater structures such as piers, docks, covered moorage, lifts, and shoreline stabilization, my comments are directed toward LUC 20.25E.065(I) (Residential Moorage-Overwater Structures) and LUC20.25E.080(F) (Shoreline Modifications). There are many standards in the Draft SMP which are not required by Ecology as part of the update.

Topics in this letter include

- Definition of Repair
- Definition of Attached Watercraft Lift
- Minor Repair and Major Repair
- Maximum Walkway Width
- Platform Maximum Size for New Docks
- Maximum Walkway Length
- Moorage Platform Location Restrictions
- Walkway Piling, Moorage Design
- Removal of Invasive Aquatic Weeds
- Mitigation Required
- Repair of Existing Residential Docks-Limitations
- Dock Repair and Replacement Standards
- Boat and Watercraft Lifts
- Nonconforming Residential Development
- Routine Maintenance and Repair
- Nonconforming Overwater Accessory Structures
- Nonconforming Moorage and Shoreline Stabilization, and Shoreline Stabilization Definition of Repair

The following comments on the topics above point out the futility of some proposed regulations, list areas where City staff would have you surpass State requirements, they identify guidelines which are needlessly burdensome, especially when compared to other jurisdictions working under the same mandates but developing less onerous and costly procedures.

LUC 20.25E.065E(I) Residential Moorage- Overwater Structures)
2. Definitions
i. Repair
Please explain what criteria was used to determine that a repair may only include replacement of up to 50 percent of the dock's piling and that replacement of more than 50 percent of the piling is deemed a new or replacement dock? **24.1**

Based on my involvement with approximately 14 local SMP Updates, I am unaware of any provisions under the WAC or the SMP Update Requirements that require a local government to adopt such a restrictive position on pier repair or replacement. Under WAC 173-27-040(2)(b) for Categorical Exemptions from a Substantial Development Permit (SDP) it states, "Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment. Total replacement of a pier is a common method of repair as explained below. **24.2**

Those who work in the marine construction industry and those in government who review and approve such work understand that piling tend to deteriorate at a similar rate so it is common for an entire pier structure to be replaced, including all piles, at the same time. This same group understand that for the past 10+ years the total replacement of a pier structure has always resulted in an improvement over the previously existing structure. All pier replacements result in the removal of treated piling, structural framing treated with toxic preservatives and solid deck surfaces that shade the area beneath a structure. Replacement structures include the installation of untreated, smaller diameter and fewer piling, agency approved wood preservatives and a fully grated surface to allow additional light to reach beneath the pier. **24.3**

With the City forming its own definition of "repair" it places unreasonable restrictions on property owners and will discourage people from repairing existing structures that will result in improvements over existing structures. And while I understand that exemption from the SDP process is not an exemption from compliance with the act or the local master program as clearly stated in WAC 173-27-040(2), I believe it is the responsibility of local governments to consider the State definition of "repair" and that total replacement is a "common method of repair" for a pier structure. I believe the Planning Commission and any neutral party would agree that the in-kind repair of an existing structure where environmental improvements as noted above are made clearly meet the definition of "no net loss". **24.4**

RECOMMENDATION: I am requesting that the City consider rewording the definition of a repair to read, "As used in this section, repair refers to maintenance to an existing dock designed to restore the dock to its original condition and configuration and ensure its continued function by preventing failure of any part. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment. Staff would have you exceed State requirements. **24.5**

I am further requesting that all sections and regulations contained within the Draft SMP that are affected by this definition be closely reviewed and changed.

m. Watercraft Lift, Attached
This definition is somewhat correct but does include some misinformation. An attached lift does have parts that extend below the Ordinary High Water Mark in that the travel post is actually secured to an existing pile to provide lateral support to prevent twisting of the pier's perimeter beam.

RECOMMENDATION: I am requesting that the City eliminate "and located entirely above the ordinary high water mark and make the definition read, "A suspended lift affixed to the structure of a dock or pier with no parts contacting the substrate." **24.6**

Section 4.a- General Requirements Applicable to New or Replacement Residential Docks
Chart 20.25.065.I.4 New and Replacement Residential Dock Standards

Maximum Dock Size- While the City is not limiting the maximum dock size in general if Ecology does approve this standard it should be recognized by the Planning Commission and Bellevue waterfront property owners that there are restrictions from state (WDFW) and federal (Army Corps) that limit dock size and development standards. The fact that other highly qualified agencies will review and approve projects should encourage the City of Bellevue to adopt a SMP that contains less restrictive standards. Throughout this process there has been no reference to the improvements made under existing state and federal regulations over the past 10 or so years and if the City were to do nothing with its SMP improvements would continue to occur.
RECOMMENDATION- Place a note in this section to make it clear that "While the City of Bellevue has no limit on the size of a dock applicants should contact state and federal regulatory agencies for their specific development standards." **24.7**

Maximum Walkway Width- Under Note 3 why does the increase of a walkway beyond 4 feet result in a 2:1 decrease in the size of the platform while under Note 4 if a walkway is reduced to 3 feet the property owner will only receive a 1:1 increase in the size of the platform? **24.8**
RECOMMENDATION- Consider removing this from the SMP.

Platform Maximum Size (New Docks)- While the maximum allowed sizes of 350sqft for Lake Washington and 250sqft for Lake Sammamish for new dock platforms appears to be very gracious it should be noted by the Planning Commission that this number only looks good in writing since property owners will also need approval from state and federal agencies.
RECOMMENDATION- Place a note in this section to make it clear that "While the City of Bellevue allows new dock platforms to be 350sqft on Lake Washington and 250sqft on Lake Sammamish applicants should contact state and federal regulatory agencies for their specific development standards." **24.9**

Maximum Walkway Length- The City should not be regulating walkways based on a minimum length or water depth and there is no requirement from Ecology to do so. This standard should be removed from the SMP and regulated by state (WDFW) and federal (Army Corps) agencies which are charged with protecting listed species and critical habitat under the State Species of Concern and Federal Endangered Species Acts (ESA). **24.10**
RECOMMENDATION- Consider removing this from the SMP.

Moorage Platform Location Restrictions- The City should not be regulating the location of platforms based on a minimum length from the shoreline or water depth and there is no requirement from Ecology to do so. The standard for the 9 foot water depth was attained from the Corps RGP-3 but it has rarely been enforced. This standard should be removed from the SMP and regulated by state (WDFW) and federal (Army Corps) agencies which are charged with protecting listed species and critical habitat under the State Species of Concern and Federal Endangered Species Acts (ESA). **24.11**
RECOMMENDATION- Consider removing this from the SMP.

Walkway Piling- While it is reasonable that the first set of inwater piling beneath the walkway are limited to 8" diameter, all other piling diameter should be driven by site and project specific load requirements. Factors such as span between piles, water depth, project location in reference to wind and wave activity, and boat size and weight are all used to determine pile size. Using a blanket approach by requiring 8" piling beneath the entire length of the walkway is irresponsible and should be determined by marine contractors and the building department which is required to consider many factors in relation to vertical and lateral loads under the Building Code. Using 8" piles in 20 feet of water to secure a 50 ton vessel is impractical and unsafe. By allowing pile size to be driven by project specific considerations it will also reduce the number of piers that will need to use additional batter (angled) piles to provide additional lateral support.
RECOMMENDATION- Consider limiting only the first set of inwater piles supporting the walkway to 8" but allowing all others to be the minimum size required to meet the design and load requirements of the proposed pier and vessels to be moored. **24.12**

Section 4.c- New and Replacement Residential Docks- Design Criteria

i. Moorage Design- While it is reasonable to expect that pier design will be done so moorage of watercraft is located as far from the ordinary high water mark and shoreline as possible, this is impossible to regulate. Watercraft are licensed and not regulated and for all intents and purposes are allowed to moor and operate anywhere in the waters of the state.

RECOMMENDATION- Consider removing this from the SMP. The regulating of watercraft moored on a lift is managed through the Corps Regional General Permit 1 (RGP-1) process on a project-by-project basis. This has been very effective and should be left in the hands of federal regulators. **24.13**

Section 4.d- New and Replacement Residential Docks- Performance Standards

iv.- Removal of Invasive Aquatic Weeds- Requiring the removal of invasive weeds for new and replacement docks is excessive, costly and onerous for property owners, and in most cases totally ineffective. The removal of invasive weeds cannot be done in a piecemeal manner but must be undertaken in a large local area or throughout the lake to be effective. Removal from a single property is ineffective and invasive weeds from neighboring or other properties will rapidly occur. The removal of invasive aquatic weeds must be funded by local, state and federal governments in order to improve the water quality of Lake Washington

RECOMMENDATION- Consider removing this from the SMP or making it a recommendation rather than a requirement. **24.14**

v.- Mitigation Required- Requiring additional mitigation at a local level beyond those already required by WDFW and the Army Corps is unreasonable and this is not part of the SMP Update requirements from Ecology. The Army Corps has developed a set of standards to mitigate for new and modified existing overwater structures (this does not apply to replacement of existing structures within the same footprint) and it includes a reasonable and flexible planting plan of native riparian vegetation. The Army Corps considers native plants already installed and requires additional vegetation to supplement them as needed. **24.15**

Some of the additional mitigation the City is proposing is excessive, expensive, ineffective, and may trigger additional permits or mitigation from other agencies. The conservation measures incorporated into current dock design (pile size, span and material, pier size, grating, height above water, etc…) already mitigate for many of the presumed impacts directed at new and replacement piers. Based on my experience with hundreds of shoreline property owners by requiring additional mitigation to offset presumed impacts will be viewed as a way to penalize a property owner and pulls the City into the position of many state and federal regulators who try to "get whatever they can". This is the wrong way to deal with waterfront property owners who are the best stewards of our waters and it also deters compliance and cooperation with the shoreline permitting process. With the number of projects completed annually outside of the permit process it is absolutely vital that local, state and federal agencies value those who participate in the arduous and expensive shoreline permitting process. **24.16**

v.(1)- The Army Corps has developed a set of standards to mitigate for new and modified existing overwater structures (this does not apply to replacement of existing structures within the same footprint) and it includes a reasonable and flexible planting plan of native riparian vegetation. The City should accept the plan approved by state and federal agencies. **24.17**

v.(2)- The placement of beach gravel or sand (fill) near or waterward of the ordinary high water mark may require additional permitting from WDFW and Army Corps and based on volume could require review and concurrence by the federal services under ESA Section 7 Consultation for impacts to listed species and critical habitat. **24.18**

v.(2) The placement of emergent vegetation. There are very few places where emergent vegetation will survive in Lake Washington and Lake Sammamish due to wave and wake action and storm activity. **24.19**

v.3- The replacement of 15 linear feet of bulkhead will require design and geotechnical and biological consultants and reports, more intense reviews from WDFW and the Army Corps, all of which will be costly for the property owner. This will also extend the permit process by a minimum of 4 to 6 months. **24.20**

v.4 The planting of a landscape area 2 times the landscaping area otherwise required in an alternate location. The intent of planting plans for overwater structures is to offset presumed impacts in the area of the development and to benefit fish and **24.21**

nearshore habitat. Requiring twice the planting area in a different location would only serve to penalize a property owner and fall short of offsetting the presumed impact.
RECOMMEDATION- Consider removing this entire section from the SMP. **24.22**

Section 5- Repair of Existing Residential Docks
a. Limitations- Please refer to page 1 where the definition of repair is discussed as it directly applies to and impacts this section of the proposed SMP. By placing limitations on the repair and maintenance to existing structures, both conforming and nonconforming, it will simply deter property owners from making improvements to existing structures sooner rather than later. **24.23**

The Planning Commission should understand that in most cases the replacement of piling results in less impact than one may think. The reason is most existing piles are treated, large diameter (12" to 14") wood that are replaced with untreated, smaller diameter (6" to 10") steel. This means less shading, less structure in the water and no treatments. The only presumed impact, the driving of the piling themselves, is short term and completed during authorized work windows from state and federal regulators whereby avoiding impacts to listed species and critical habitat. **24.24**

The limitations in this section will still allow total replacement of a pier by replacing 50% of the existing piles and repairing the other 50% so it seems redundant to require a property owner to meet the requirements for a new dock simply based on the number of piles being repaired or entirely replaced. The advantage of allowing the total replacement of an existing pier to be classified as a repair is that property owners, the City and the environment will benefit by having all piles replaced with smaller diameter, untreated piles and an entirely grated surface installed on the pier during one action. This approach may also encourage property owners who would otherwise delay replacing their structure to do so sooner. **24.25**
RECOMMENDATION- Reconsider the City's definition of a repair and the limitation listed in this section and allow property owners to totally replace all existing piles and piers as repairs. There is no requirement from Ecology in the SMP Update guidelines to place such limitations on the repair of existing residential docks. **24.26**

b. Dock Repair and Replacement Standards
i.- One of the most common methods of repairing piling is what is known as sleeving where a HDPE tube is place over the existing pile. I communicated with Bellevue planning staff and they suggested I relay this to the Planning Commission for inclusion in the SMP. **24.27**
RECOMMENDATION- Please consider revising this statement to read, "Piling may be repaired by cutting, splicing, sleeving, or capping the existing piling."

Section 7- Boat and Watercraft Lifts
There appears to be some confusion over the difference between fixed lifts and freestanding lifts in that the City states that fixed lifts are preferred over freestanding lifts because they eliminate disturbance to the substrate. This information is in error since fixed boatlifts require 2 piles to be driven into the substrate and the amount of structure above the water for a fixed lift is more substantial than that of a freestanding lift. **24.28**
RECOMMENDATION- Consider eliminating the first sentence in this section since it is only the smaller suspended personal watercraft lifts that do not disturb the substrate.

J. Nonconforming Residential Development
4. Regulations and Thresholds Applicable to all Nonconforming Residential Development
c.- Routine Maintenance and Repair- Once again and as mentioned earlier, the City has determined on its own that a repair should have a % threshold placed on it which when exceeded would require a nonconforming residence, and in the case of Section 7, overwater structures to comply with the regulations for new development. In this case the City is using valuation of a residence rather than % of piling to be replaced as discussed previously. This is not required under the WAC or under the SMP Update requirements from Ecology. **24.29**

WAC 173-27-080 outline's the state's position on Nonconforming Uses and Developments. The wording below ifs taken directly from the WAC:

WAC 173-27-080

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

(5) A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:
(a) No reasonable alternative conforming use is practical; and
(b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

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

(8) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

Please note that number 8 above only applies to damage and not voluntary replacement meaning that a nonconforming structure may be fully replaced under any other circumstances up to 100% of replacement value. I believe the City of Renton has adopted regulations that will allow 100% replacement value in place of 75%. Douglas County and the City of Monroe have adopted WAC 173-27-080 verbatim into their SMP's.

RECOMMENDATION- I am asking that the Planning Commission consider and adopt the default position of the state for nonconforming uses and developments as listed below in Section 173-27-080 taken directly from the WAC with **24.30**

the exception of number 8. I am requesting that the Planning Commission consider raising the 75% threshold in number 8 above to 100%, similar to what I believe the City of Renton has done. It is devastating enough to lose a home to an unexpected event but to further compound this by not being able to replace it back to its former configuration. Douglas County and the City of Monroe have adopted WAC 173-27-080 into their SMP's.

NOTE: There is nothing in SMA or WAC that differentiates between repair and replacement and the WAC as pointed out previously recognizes that for some structures or developments total replacement is considered a common method of repair. **24.31**

7. and 8. Nonconforming Overwater Accessory Structures and Nonconforming Moorage and Shoreline Stabilization

Please clarify if existing nonconforming overwater structures such as piers and docks can be repaired and possibly replaced as outlined in number 8 following this section. This section refers back to paragraph J.4.C for "improvements" to overwater accessory structures so please explain what is meant by "improvements". Nonconforming residences and overwater accessory structures should be allowed to be totally replaced. The wording in paragraph J.4.C is very concerning because under the proposed regulations a large number of residences and a vast majority of residential docks will become nonconforming. This is not what the City stated in the mailer sent to citizens and I quote, "Very few existing structures would become non-conforming as part of the proposed draft". Every pier that has walkway wider than 4 feet, platforms within 30 feet of the shoreline or in less than 9' water depth, platforms larger than 350sqft or 250sqft, walkway piling larger than 8" in diameter, piling within 30 feet of the ordinary high water mark, non grated decking, and lifts closer than 30 feet to the shoreline will all be nonconforming if the proposed draft is approved. **24.32**

RECOMMENDATION/QUESTION- Because the repair and replacement of existing overwater structures will be far more likely than the construction of new structures, and despite Bellevue's claim that "very few existing structures would become non-conforming as part of the proposed draft", I am recommending that the City clearly state its position so property owners understand what they can and can't do to their existing piers. Can piers, both conforming and non-conforming, be repaired and replaced under the proposed draft? If not, can the Planning Commission find a way to allow this since it offers the greatest opportunity for improvement ? **24.33**

LUC 20.25.080.F- Shoreline Stabilization

1. Applicability- The City will allow shoreline stabilization measures designed to protect existing primary structures, public facilities, or public use of structures from shoreline erosion in the shoreline at or above the ordinary high water mark. There is nothing in this section to allow the protection of property or a legally existing shoreline use although this is allowed under WAC 173-26-231 Shoreline Modifications which states:

The provisions in this section apply to all shoreline modifications within shoreline jurisdiction.

(2) General principles applicable to all shoreline modifications. Master programs shall implement the following principles:

(a) Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.

(b) Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.

(c) Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.

(d) Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.

(e) Where applicable, base provisions on scientific and technical information and a comprehensive analysis of drift cells for marine waters or reach conditions for river and stream systems. Contact the department for available drift cell characterizations.

(f) Plan for the enhancement of impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.

(g) Avoid and reduce significant ecological impacts according to the mitigation sequence in WAC 173-26-201 (2)(e).

(3) Provisions for specific shoreline modifications.
(a) Shoreline stabilization.
(i) Applicability. Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods.

QUESTIONS:

- Does a legally existing shoreline use include accessory structures and appurtenances located on the property which are commonly associated with such use? If so, should these not be protected?
- Does the legally existing shoreline use include areas commonly used for activities associated with such use? If so, should these areas not be protected? **24.34**
- Does a property owner have the right to protect their property itself from erosion? Land is often valued higher than the structure it contains. **24.35**
- Can a property owner be required to give up useable area or property in order to remove existing shoreline stabilization or replace it with a softer form of stabilization? **24.36**
- Based on the historical wind, wave and storm conditions regularly occurring on Lake Washington and Lake Sammamish doesn't number 2(c) above support the case for bulkheads to protect properties along their unpredictable shorelines? **24.37**

Section 2- Definitions
f. and g.- Minor Repair and Major Repair- It is unclear how partial or total repair or replacement of an existing shoreline stabilization structure results in a net loss to shoreline ecological functions. When a bulkhead is replaced it is typically with a battered (laid back) structure that is more environmentally friendly that a vertical structure.

QUESTION- Please explain how the in-kind repair or replacement of an existing structure with one that has a more environmentally friendly design results in "no net loss"? **24.38**

GENERAL OBSERVATIONS OF THE DRAFT SMP AND THE BELLEVUE UPDATE PROCESS

Based on my extensive work and knowledge with other SMP Updates, it is my opinion that Bellevue has made their SMP very long, confusing, and more complicated than necessary. The average citizen should be able to make sense out of it so it reads like a book without major cross references or flipping back and forth page to page. **24.39**

I also am disappointed that Bellevue has not held firmly to their words regarding repair and replacement of existing structures. When contractors and permit agents invested valuable time to meet with the staff a couple years ago the City was proposing to allow total repair and replacement of existing conforming and nonconforming structures (since those in our business knew the revised standards would make most piers nonconforming). There was also discussion of offering incentives for those who relocated overwater coverage in the nearshore to deeper water and further from the OHWM. Instead, the City is placing thresholds on repair and replacement which the WAC and Ecology do not require. This is strictly controlled by local governments. The same is true for the repair and replacement of shoreline stabilization where the City has arbitrarily chosen a % threshold to differentiate "minor" from "major" repair. **24.40** **24.41**

Thank you your time and attention on these important matters that will impact many of your citizens. You may contact me at 425-343-2342 or e-mail at integritypermitting@hotmail.com if you have any questions.

Sincerely,

David Douglas
Permit Manager/Shoreline Consultant

Integrity Shoreline Permitting • 818 Mill Ave • Snohomish WA 98290• Phone: 425-343-2342 • Fax: 206-220-3737

Dave Douglas	disclosed that he has worked on and off for the Washington Sensible Shorelines Association as a contracted consultant, though noted that his testimony had not been paid for or subsidized in any way by the organization. He said 40 years of silence from the Department of Ecology has resulted in the current predicament. Building codes are updated every couple of years, but most of Ecology's scientific references date back to the 70s and 80s. The proposed sweeping changes are the result of having to catch up. He noted that staff had used the words "predictability" and "permit streamlining" and said those terms have always cost property owners, not the government. He provided the Commissioners with written comments covering 17 issues with the Shoreline Master Program. He said he wrote to the Department of Ecology and every planning department associated with Lake Washington and Lake Sammamish in 2009 asking for information on some 23 issues based on his experience working with property owners. No answer ever came from the Department of Ecology. In the draft document, much of the language relative to shoreline stabilization refers to rivers with side channels and to marine waters, not fresh water lakes. Very few studies have been done on the impacts on fresh water lakes, though the property owners in the Lake Washington and Lake Sammamish watershed are targeted for removal. The foundation of the Shoreline Master Program concept of no net loss is based on existing conditions at the time the shoreline inventory was taken. The shorelines in Bellevue are very highly developed and if nothing new were to be built, no net loss would be met. If all existing structures, both conforming and nonconforming, were to be replaced exactly as they are, no net loss would be met. When structures are repaired or replaced and improvements are made, a net gain is achieved. For piers and docks, no net loss only applies to undeveloped properties where there are no current overwater structures. According to the Department of Ecology standards, a new 480-square-foot pier with a four-foot-wide walkway, two-by-twenty finger pier and six-by-twenty-six platform, along with an acceptable native planting plan, already achieves no net loss without action on the part of any other property owner in the city. The Corps of Engineers RGP3 from which Ecology adopted its development standards is specifically directed toward new or modification of existing residential overwater structures. The term "modification" as used in Ecology's regulations applies to a reconfiguration, not to a repair or replacement. The WAC specifically states that normal maintenance and repair of existing structures is categorically exempt from the substantial development permit process. Replacement of a structure or development may be authorized as a repair where such development is the common method of repair for the type of structure or development, and the replacement structure or development is comparable to the original structure or development. While replacement structures must meet the requirements of the Shoreline Master Program, replacement does meet the no net loss criteria.	**24.42** **24.43** **24.44** **24.45** **24.46** **24.47** **24.48** **24.49** **24.50**

Draft SMP Comment #25 - Brock Howell
Prehearing Written Comments

From: Paine, Michael
Sent: Wednesday, May 25, 2011 10:45 AM
To: Bedwell, Heidi
Subject: FW: Adopt a Strong Shoreline Management Act!

-----Original Message-----
From: Brock Howell [mailto:brockwhowell@gmail.com]
Sent: Wednesday, May 25, 2011 10:03 AM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **25.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **25.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **25.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **25.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Comment #25

Brock Howell
8548 Second Ave NE
Seatte, WA 98115
50-421-9936

Draft SMP Comment #25 - Brock Howell
Prehearing Written Comments

Comment #25

Draft SMP Comment #26 - Thomas Proehl
Prehearing Written Comments

From: Thomas Proehl [thproehl@comcast.net]
Sent: Wednesday, May 25, 2011 5:49 PM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **26.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **26.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **26.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **26.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Thomas Proehl
3777 148 AVE SE
Bellevue, WA 98006
425-746-0524

Comment #26

Draft SMP Comment #27 - Robert Cartano
Prehearing Written Comments

From: Inghram, Paul
Sent: Wednesday, May 25, 2011 5:44 PM
To: Bedwell, Heidi
Subject: FW: Proposed Shoreline regulations, Comments for the record.

From: robert cartano [mailto:rcartano@hotmail.com]
Sent: Wednesday, May 25, 2011 5:28 PM
To: PlanningCommission; david cartano; julie; Helene Marcellia; s.savard@comcast.net; Nichols, Sally P.; mcartano@aol.com
Subject: FW: Proposed Shoreline regulations, Comments for the record.

Dear Planning Commission:

I am submitting my written comments regarding the propose shoreline regulations and request that they be included in the public record.

My family has owned 100' of waterfront near Enatai Beach since the early 50's. The beach lot has never been developed and the 6 adult Cartano children, their children, and grandchildren use it for recreation. We have no plan to develop the property, but the new regulations impose restrictions that will significantly impact its value if we ever had to sell it. **27.1**

Specifically:

27.2
It will be very difficult to construct a house on the property with 50' setback especially if a deck is included. Constructing a soft bulkhead would not be possible due to the height of the existing bulkhead. We also saw the impact of the Columbus Day storm which would have decimated our beach front. **27.3**
Therefore we will have to plant 60% of the shoreline in a no-touch native vegetation buffer. We now use almost exclusively the first 25' for picnicking, lounging, barbequing and access to the water and the dock. A vegetation buffer will significantly impact the way someone could use the beach. In addition we would be required to post a maintenance bond and record the encumbrance on our title. **27.4**

In addition to changing the way we have used our beach for the last 60 years, an encumbered title, and a 50'
setback will reduce our property values by a minimum of $200,000 due to the increased costs of permitting, reduced flexibility in construction design, and reduced footprint of the usable square footage. No effort has

Comment #27 **27.5**

been made that I have seen to address the economic impact to landowners of the new regulations nor has any
consideration of reducing property taxes been discussed.

27.6

I think the vegetation buffer requirement should be eliminated since it will apply to very few land owners and is a disproportionate burden being placed on a few land owners, especially those who have chosen not to build. The net impact on the lake quality will be minimal unless the requirements for VCA's were to be imposed on a much broader group of landowners. At a minimum the Planning Commission needs to demonstrate that the proposed regulations will contribute appreciably to the desired future conditions and define the desired future conditions before asking a small percentage of the landowners to pay the price these regulations will impose.

I would like to see a regulation that allows homeowners to build within the 25-50' proposed buffer as long as the structure or deck did not exceed 40%-50% of the square footage of the buffer. This will keep the majority of
the buffer undeveloped and allow some flexibility in design, retention of historical use patterns, and maintenance of
reasonable property values. **27.7**

P.S. They could take down all the contruction at Coulon Point Park near the mouth of the Cedar River and address
the Millfoil issue and have a far greater impact on the lake quality than the above regulations will provide.

27.8

Thank you for your consideration,
Bob Cartano
rcartano@hotmail.com

Robert J. Cartano

3135 Broadway Ave. East

Seattle, WA 98102

(206) 329-9172

rcartano@hotmail.com

Draft SMP Comment #28 - Hugh Jennings
Prehearing Written Comments

From: Hugh Jennings [h2ouzel@comcast.net]
Sent: Wednesday, May 25, 2011 4:08 PM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:

* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **28.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **28.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **28.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **28.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Hugh Jennings
16116 NE 4th St.
Bellevue, WA 98008
425-746-6351

Comment #28

Draft SMP Comment #29 - Andrew McCormick
Prehearing Written Comments

From: Andrew McCormick [andy_mcc@hotmail.com]
Sent: Wednesday, May 25, 2011 3:29 PM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:

* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **29.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **29.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **29.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **29.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Andrew McCormick
10208 NE 23rd Street
Bellevue, WA 98004
425 637-0892

Comment #29

Draft SMP Comment #30 - Jim McRoberts
Prehearing Written Comments

From: Jim McRoberts [jim4fish@comcast.net]
Sent: Wednesday, May 25, 2011 1:49 PM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **30.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **30.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **30.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **30.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Jim McRoberts
5430 Lake Wash Blvd SE
BELLEVUE, WA 98006-2643
425-643-2743

Comment #30

Draft SMP Comment #31 - Ashley Quackenbush
Prehearing Written Comments

From: Paine, Michael
Sent: Wednesday, May 25, 2011 11:09 AM
To: Bedwell, Heidi
Subject: FW: Adopt a Strong Shoreline Management Act!

-----Original Message-----
From: Ashley Quackenbush [mailto:quackenbusha@nwf.org]
Sent: Wednesday, May 25, 2011 11:09 AM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **31.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **31.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **31.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **31.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Comment #31

Ashley Quackenbush
12017 17th Ave NE
Seattle, WA 98125
(206) 251-5691

Draft SMP Comment #31 - Ashley Quackenbush
Prehearing Written Comments

Comment #31

Draft SMP Comment #32 - Futurewise (Tim Trohimovich)
Prehearing Written Comments

From: Tim Trohimovich [Tim@futurewise.org]
Sent: Wednesday, May 25, 2011 5:41 PM
To: Paine, Michael
Cc: Dean Patterson; htrim@pugetsound.org
Subject: Bellevue SMP Comments
Attachments: FW BuffersScience Recom 11May Final.pdf; FW NNL-CIA-PR Recomds 11May Final.pdf; FW Envirs Recoms 11May Final.pdf; FW-PPS ltr BellevSMP 11May final.pdf

Dear Mr. Paine:

Enclosed please find Futurewise's and People for Puget Sound's comments on the Bellevue SMP update for the planning commission hearing this evening. I am bring the original and paper copies for the Planning Commissioners. Thank you in advance for considering our comments.

Tim Trohimovich, AICP
Co-Director of Planning & Law
---
email: tim@futurewise.org
web: www.futurewise.org
---
814 Second Avenue, Suite 500
Seattle, WA 98104-1530
p 206 343-0681 Ext. 118
f 206 709 8218
Celebrating 20 years of protecting Washington's Future
Our mission at Futurewise is to promote healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations

Comment #32

May 25, 2011

Mr. Hal Ferris, Chair
City of Bellevue Planning Commission
c/o Michael Paine, Planning Manager
Bellevue Planning & Community Development
450 110th Avenue NE
Bellevue, WA 98009

Sent by email to: mpaine@bellevuewa.gov

Subject: Comments on the Bellevue Shoreline Master Program May 2011 Draft

Dear Chair Ferris and Bellevue Planning Commissioners:

Thank you for the opportunity to comment on the Bellevue Shoreline Master Program (SMP). We appreciate the time and effort that Bellevue staff, Planning Commissioners, and residents are devoting to this important update. Washington's shorelines need improved policies to manage them and the shoreline mater program is an opportunity to adopt those policies. ***Futurewise*** is a statewide citizens group that promotes healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. ***People For Puget Sound*** is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

We Strongly Support the SMP Update

We support the comprehensive update of the Bellevue SMP. Given its age, it needs a comprehensive update. It also needs a comprehensive update to protect the threatened species that use Bellevue's shorelines. For example, Lake Washington in Bellevue is the habitat of the threatened chinook salmon, the threatened steelhead trout, and the threatened bull trout.[1] These threatened species are one of the reasons we need to better manage Lake Washington's habitat. **32.1** **32.2**

We would like to commend the City of Bellevue, the city staff, and city residents that have participated in the effort. While there are changes we recommend in this letter, the SMP does include some significant improvements over the current SMP. While there will be pressure to weaken these elements, we urge you to retain them. **32.3**

While there are many good protection strategies in the draft SMP, there are some areas that we recommend be strengthened to meet the requirements of the Shoreline Management Act (SMA) and the

[1] United States Department of Commerce National Marine Fisheries Service, *Puget Sound Chinook Salmon ESU* map accessed on April 29, 2011 at: http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Maps/upload/chinpug.pdf, the United States Department of Commerce National Marine Fisheries Service, *Puget Sound Steelhead ESU* map accessed on April 29, 2011 at: http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Maps/upload/Steelhead%20Puget%20Sound%20map.pdf, and the United States Fish and Wildlife Service, *Critical Habitat for Bull Trout (Salvelinus confluentus) Unit: 2, Puget Sound, Sub-unit: Lake Washington* map accessed on April 29, 2011 at: http://www.fws.gov/pacific/bulltrout/finalcrithab/washington/Unit_02_Lake_Washington.pdf.

Shoreline Master Program Guidelines (SMP Guidelines).[2] We have attached three of our guidance documents that we hope can inform the update effort. Our comments for improvements reference the information in these guidance documents. **32.4**

- **Futurewise's Guidance on No-Net-Loss of Ecological Function, Cumulative Impact Analysis and Restoration Planning.** This document focuses on the SMA and SMP Guidelines requirements for a framework that accomplishes no-net-loss, including the need to build mitigation sequencing into the structure of the SMP. It also discusses the pitfalls in actually making it happen, including erroneous assumptions about accounting for impacts allowed by the SMP that have no logical basis in science or the practice of assessing development impacts. Of particular importance is the SMA preference that control uses that cause degradation. Lastly it describes the jurisdiction's responsibility to compensate for impacts allowed by the SMP.
- **Futurewise's Guidance on Establishing Shoreline Environments.** This document focuses on the SMA and SMP Guidelines requirements for protecting the remaining areas of intact shorelines using protective environments, and their importance in accomplishing mitigation sequencing. It also discusses the pitfalls in actually making it happen, including erroneous assumptions about accounting for impacts allowed by the SMP that have no logical basis in science or the practice of assessing development impacts. Lastly it describes the jurisdiction's responsibility to compensate for the impacts allowed by the SMP.
- **Futurewise's Guidance on Buffer Options Using Science.** This document describes the SMA and SMP Guidelines requirements, and the pitfalls in establishing a buffer system that is compatible with buffer science. It includes methods for dealing with the range of different buffer conditions from intact areas to heavily developed areas, and covers using small buffers for heavily developed locations. It explains why small buffers don't work to protect ecological functions unless they are accompanied by built-in mitigation in the form of enhancement requirements to offset the built-in impacts that come with small buffers. We understand that small buffers are not consistent with the buffers in the National Marine Fisheries Service - Northwest Region's *Endangered Species Act Section 7 Consultation Final Biological Opinion for Implementation of the National Flood Insurance Program in the State of Washington, Phase One Document – Puget Sound Region.*[3] The city will need to carefully consider the potential consequences of using such small buffers.

SEPA Review

In our review of the SMP we found that the SEPA threshold determination had already been issued as a Determination of Non-Signficance (DNS). This is a typical situation for most SMPs we have reviewed. **32.5** However, those SMPs almost invariably make the standards more protective, thus the SMP update would have a significant <u>beneficial</u> impact. Yet, the SMP staff report identifies many specific instances where the protections are being reduced compared to the CAO, which currently applies, in order to make development easier that it is now. This indicates that the SMP update will actually have significant <u>adverse</u> impacts. Consequently, the issuance of a DNS appears to be inappropriate, and we **32.6** recommend withdrawing it for additional consideration, and presumably a Supplemental Environmental Impact Statement.

---

[2] While the SMP Guidelines are called "Guidelines," they are actually binding rules that provide standards that SMPs must meet although local governments have flexibility to meet local circumstances. WAC 173-26-171(3)(a).

[3] Accessed on August 27, 2010 through: http://www.nwr.noaa.gov/Salmon-Habitat/ESA-Consultations/FEMA-BO.cfm

The Shoreline Management Act, in RCW 90.58.090(4), requires that SMP must be at least as protective as the city's critical areas regulations. So adopting a SMP that weakens those protections violates the Shoreline Management Act. **32.7**

Uses That Damage the Environment Must be Prohibited or Include Special Protections

Our guidance documents describe how the SMP itself must be designed to accomplish no-net-loss of ecological functions and to incorporate mitigation sequencing. Since the entire SMP must be designed to accomplish no-net-loss of ecological functions, this includes the use limits, which are as important as environments in building mitigation sequencing into the SMP. **32.8**

The origins of SMA preferences are found in the policy statements of RCW 90.58.020. Paragraphs 2 and 3 are described in our guidance documents. Paragraph 4 - the implementation paragraph – is discussed below and provides specifics for how to use preferences. Additional requirements dealing with preferences are provided in the SMP Guidelines. Both the SMA and the SMP Guidelines have explicit requirements establishing ecological protection, water-dependency, and public enjoyment preferences. They are based on the fourth paragraph of the SMA policy section, which is the implementation statement [with emphasis added]: **32.9**

> "In the implementation of this policy *the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines* of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be *preferred* which are consistent with *control of pollution* and *prevention of damage to the natural environment*, or are unique to or *dependent upon use of the state's shoreline*."

The SMP Guidelines principles for general use provisions (in WAC 173-26-241(2)(a)) further provide that [with emphasis added]:

> Shoreline master programs shall implement the following principles:
> (i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas. ....
> (iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses. ...

The two preferences for water-dependency and protection from pollution and environmental damage incorporate the understanding that uses needing to be in or near the water are preferred but inherently can damage the environment. Of course, like all development, the SMA and SMP Guidelines require that they must minimize the damage and compensate for their impacts. Conversely, uses that don't need to be in or near the water must control pollution and avoid damage to the environment to be considered preferred uses. Otherwise they are non-preferred, because the damage they cause to shoreline resources is the opposite of the SMA Policy. Such uses must be prohibited or carefully controlled with special requirements. They cannot be treated the same as preferred uses are treated, otherwise there is no effect to the preference. **32.10**

Since the majority of ecological functions come from native intact vegetation, degrading that vegetation (including further degrading already degraded vegetation) causes damage to the environment. Uses and development that meet a science-based buffer go far in preventing damage. If **32.11**

such a buffer is not applied, the development will harm the environment - so there must be a good reason to allow it. This is why the SMA establishes the preference for water-dependency, and establishes the Shoreline Variance and Conditional Use Permit processes – they ensure there is a hardship or other good reason for not meeting a buffer (or other regulation). And of course, like all development, the SMA and SMP Guidelines require that the impacts be compensated for. **32.12** **32.13** **32.14**

This makes water-dependency criteria a critical factor in establishing use limits that accomplish mitigation sequencing for two reasons. First, if a development has no need to be near the water, it should not be allowed in shoreline jurisdiction, unless limited to specific instances. For example, commercial and industrial development have SMP Guideline requirements that carefully get at these limited instances. Hardship conditions, such as for a variance in situations of existing development, would also be such an instance. And the SMA and the SMP Guidelines give a priority to single family residences that control pollution and prevent damage. In general, allowed uses should be limited to water-oriented uses and single family residences. **32.15**

Second, for any development that is allowed in shoreline jurisdiction, if a development has no need to be in the water or providing access to the water, it should be outside an intact, science-based buffer, where it will cause the least amount of damage. Development within a science-based intact buffer that is not water-dependent or water-related development would cause damage, is the opposite of the SMA policy, and is non-preferred. It must be prohibited or somehow carefully limited, as the Guidelines require. Thus, water-dependent and water-related uses need to be in the buffer and are preferred. But water-enjoyment and non-water-oriented development can meet the buffer while still maintaining their function. They must prevent harm to the environment, and the primary means of doing this is to meet the buffer. **32.16**

Our guidance document dealing with buffers provides a detailed discussion of this issue. Our guidance documents dealing with both buffers and no-net-loss both provide a detailed discussion of the impacts of development, including many incorrect assumptions that some development has no impacts. At least one of these is apparent in the Bellevue buffer system. There is an assumption that a 50 foot buffer, even if intact (as the SMP seems to require), will prevent impacts of new development as if it is a science-based buffer. Another assumption is that by meeting the small buffer width and setback of 25 or 50 feet, even if intact, unlimited new development outside that width will have no impacts. **32.17** **32.18**

These assumptions are further emphasized in the presumption that meeting the SMP standards results in no-net-loss found in proposed Section 20.25E.060(B)(2). The note on the provision states that the City is providing a "regulatory safe harbor for applicants." There are two problems with such a statement. First, it is impossible for it to be true as a blanket statement without regard to the scale of the project or the sensitivity of the site. Second, it apparently means the City is taking responsibility for compensating for any project impacts not dealt with by the SMP, or that are unforeseen. In addition, the city is taking responsibility for ESA "takings" actions and other similar actions. This is a huge financial risk and liability. We recommend deleting proposed Section 20.25E.060(B)(2). **32.19**

Vegetation Conservation

For Bellevue, where only a small part of the shoreline is still intact, the above issues have ramifications in the buffer system. To protect shoreline functions, the lightly developed and intact areas – mainly the Conservancy environments - need science-based buffers and vegetation management to protect these remaining intact areas. But heavily developed areas must also deal with the issues discussed above. Specifically, almost all development allowed by the SMP is allowed very close to or in the water, and will cause damage. Such instances must be limited to hardship situations where alternatives are not available (existing developed sites), then mitigation sequencing must be used (especially avoidance and minimization), and then the remaining impacts must be compensated for. Even with the extensive minimization regulations found throughout the SMP, there will be remaining impacts. The regulations **32.20** **32.21**

must specify how the compensation will be provided. There are some specifics about compensatory mitigation described in many cases, and are well done and well thought out. But all other situations also need such attention, as well. **32.22**

The buffer system is very well thought out and nuanced. It covers many instances; however, there are still gaps that need to be plugged.

- The buffers need to better match the two Urban Conservancy environments on three fronts. The Urban Conservancy – Open Space and Urban Conservancy seem to be applied appropriately, except for one critical problem area. The Urban Conservancy is mainly applied to park and park-like locations, which is appropriate with the right vegetation conservation provisions. But it is also applied to the Mercer Slough office park. Furthermore, the office park seems to be the source for where the buffer width came from, because most other Urban Conservancy areas seem able to accommodate larger buffers. We recommend that the office park receive a specialized environment, similar to the Shoreline Residential Canal environment. **32.23** **32.24**
- Consequently, we also recommend that the remaining Urban Conservancy sites have more science-based buffers applied. **32.25**
- The SMP description for the Urban Conservancy – Open Space environment is a rough equivalent to the Natural environment in the SMP Guidelines, which is acceptable. However, the 50-foot buffer is completely inappropriate given the science for buffers of intact areas. Our buffer guidance document recommends buffers of at least 150-feet for such highly functioning locations. **32.26**
- The relationship between the vegetation conservation, setbacks, landscaping plan, and mitigation plan requirements is difficult to follow. Each seems to have different thresholds, yet each seems to have important elements needed to accomplish no-net-loss. Rather than citing all the sections with specificity, our comments focus more on conceptual approaches that should be included – leaving the specifics of how to accomplish them to the City. In some instances, some requirements seem to be at odds with others. For example, re-vegetation may be required in one section, but seems to be waived in another section. We recommend that these different sections be combined as much as possible to establish vegetation conservation requirements and compensatory mitigation standards that are linked to shoreline jurisdiction, setbacks, and buffers. **32.27**
- It appears that a buffer in the form of the Vegetation Conservation Area (VCA) is established. Outside or coincident with the VCA width a structure setback is established. But there is no protection for native vegetation outside the small VCAs. This also points out the SMPs assumption that unlimited development outside the small buffer has no impacts. Areas of remaining native vegetation outside the small VCA still have functions, and need to be protected whenever feasible, and otherwise should be compensated for by replacement adjacent to and in addition to the VCA and other enhancement requirements. A 2:1 ratio should be used to account for failure rates and the difference in function due to lost maturity. This is particularly important for many segments of shoreline on Lake Sammamish, especially in the north area. These areas have blocks of intact vegetation behind a waterfront line of residential development. These areas have functions and need to be protected. Some instances will require off-site mitigation. **32.28** **32.29** **32.30**
- Along the same lines, development outside the small setbacks and VCAs still has impacts that need to be mitigated. We recommend a 1:1 enhancement ratio for new structures and hardscapes outside the setback. **32.31**
- There seems to be lots of ways to waive the structural setback – specifically many structures are allowed inside the structural setback, despite the definition of structure and the basic requirement for the setback. The definition seems to have no consistent bearing on lists of items that are specifically listed as allowed inside the setback. For example, large areas of new structural hardscaping are allowed and it is not clear that they trigger enhancement, even if **32.32**

they are concrete structures. We recommend that structures should actually have to meet the structural setback to minimize and avoid impacts. Structures and hardscapes should be limited to existing ones, and new ones allowed only when other alternatives are not feasible. When inside the setback, they should require enhancement compensation at located adjacent to the VCA and other enhancement requirements at a 2:1 ratio to offset impacts of development so close to the water.

- New development of different levels triggers the requirement for enhancement of the VCA. But there seems to be lots of ways to waive the requirement, especially for residential development. There are large enhancement trigger thresholds for residential development – 500 sq. feet, 200 sq. feet, etc. These thresholds are too large, and should be reduced to smaller sizes more consistent with *de minimus* types of impacts. In addition, there is no cumulative provision, so 500 sq. feet can be added indefinitely without triggering the built-in compensation that is in the SMP. **32.33**
- When triggered, 60% of the VCA is supposed to be enhanced, but there seems to be exceptions that are not clear. For example, smaller development must do the 60% enhancement, but larger development does an equal area enhancement, which can easily be much smaller than the 60%, which is logically inconsistent. In addition, it appears that the remaining 40% is allowed to be developed with little limit, and it is unclear if such development must be compensated for. We recommend that development in the setback area be compensated as we describe above. Similarly, development inside the VCA should be only allowed if no other alternatives are feasible, and should be compensated for at a 3:1 ratio, similar to the significant tree ration currently proposed. **32.34**
- The incentives to reduce the setback for various reasons includes several that promote development closer to the water, but result in no improvement to degraded conditions. No incentive should be given to just leave an intact area alone – they should only apply to degraded areas. Setback reduction incentives should still be subject to alternatives that don't need the reduction. They should only be given if they result in actual improvement in compensation for the impacts. Minimization of the impact on one function (i.e. impervious surface, etc.) should not be used to increase impacts on other functions (development close to the water). Minimization should be required by default under mitigation sequencing. **32.35**
- The setbacks and VCA for Phantom Lake are deferred to the CAO. However, these appear to be even smaller than for the other shorelines. This would be inappropriate on its own; however, observing Phantom Lake on Google Earth shows that there is a wildly variable range of buffer conditions – ranging from very large to very small setbacks, and ranging from nearly intact to highly degraded conditions. There is no logical basis for using the proposed setback and buffer system. We recommend applying a system such as described in our buffer guidance document. For example, we recommend science-based buffers for intact areas. For developed areas, we recommend a variable setback system based on the current setback. We recommend all existing native vegetation in shoreline jurisdiction be protected. We recommend that for developed areas, that the VCA be 50% of the setback. We recommend that new development on undeveloped sites meet the science-based buffer and make it functioning so it can act to mitigate impacts. **32.36** **32.37** **32.38**
- Our recommended changes to the existing detailed system will ensure that all instances of development impacts will be compensated for by the SMP, and that existing native vegetation will be protected as much as possible. Our previous comments emphasize the need to limit development in the vegetation areas and water to water-dependent and water-related uses. **32.39**

Environments

We have the following recommendations on the environments:

- The environment descriptions have management goals but no management policies, as required by the SMP Guidelines. **32.40**

- The Urban Conservancy – Open Space environment is described as very similar the SMP Guidelines Natural environment, which is appropriate. However, the designation criteria describe "low-intensity" development, when the Guidelines require "very-low-intensity" development. In addition, several uses in the tables allow intense development – especially park and ride lots, utility facilities, essential public facilities, interpretive centers, parks, and nurseries. **32.41**
- As previously described, the Mercer Slough office park should not be designated Urban Conservancy. It is incompatible with the SMP description and SMP Guidelines. **32.42**

Uses and Modifications

We have the following recommendations on the use table:

- The list of prohibited uses should include several categories of polluting uses, such as storage and handling of hazardous substances, gas stations, wrecking yards, etc. **32.43**
- In the Urban Conservancy – Open Space environment, intense and structural uses and modifications should be prohibited, including those described in our environments comments. Like in the Natural environment, residences and their accessory dwelling units should be a conditional use. **32.44**
- In the Aquatic environment, many developments are allowed, which can be inconsistent with adjacent environments and ecologically intact areas. As we describe in our guidance document on environments, uses in the Aquatic environment should also be consistent with the adjacent environments. **32.45**
- In the Urban Conservancy environment, multi-family residential uses are too intense and inconsistent with the provision to protect ecological functions, and should be prohibited. **32.46**
- Generally commercial uses are strictly limited and meet the SMP Guideline water-dependency standards. But there are several uses that have the same characteristics, but do not have to meet any water-dependency characteristics. These include: various institution uses in the residential chart (all are commercial ventures), essential public facilities (similar to offices, gathering facilities, industrial activities, etc.), religious activities (similar to other gathering facilities), nurseries (are commercial ventures). If they are to be left in, they need to meet the SMP Guidelines commercial (in possibly industrial) requirements for water-dependency. **32.47**
- Some uses are conditional uses or permitted depending on a master plan approved by the city. But master plans do not inherently determine appropriateness with the SMA and SMP policies and preferences, which is the underlying requirement for a conditional use. Such a criteria should not be used to determine whether some uses have to obtain a conditional use permit and others do not. **32.48**
- Structural modifications need to be prohibited in the Urban Conservancy – Open Space environment, and should be conditional uses in the Urban Conservancy environment. **32.49**

Development Standards

We have the following recommendations on the development standards:

- Many uses and modifications inherently have impacts that cannot be avoided – especially water-based development and subdivisions. We recommend that a new standard be added to these sections stating a compensatory mitigation plan shall be provided with the application. We also recommending being specific in how the mitigation should be provided, similar to the proposed buffer compensatory mitigation provisions. **32.50**
- The residential regulations include a site planning requirement that is an excellent description of how to do mitigation sequencing at the site-wide scale. We recommend that it be applied to all development, not just residential. **32.51**
- The residential regulations include parking and driveway regulations. Mitigation sequencing for driveway bridges should be included. Specifically, access points that do not require a crossing **32.52**

should be required to be used when available, options to share crossings should be used and required for subdivisions, crossings should span the floodway or channel migration zone.

- Residential utility crossings should use the same kinds of avoidance approaches as described for bridges. Underground utility crossings should share nearby corridors, should use bridge attachment when possible, should use a sleeve under the water feature to assist future replacement/repair, should bore rather than trench, and should prevent the french-drain effect in high-groundwater areas. **32.53**
- The dock regulations are very detailed. We support the regulations for marinas and boating facilities – they are detailed and thorough. The replacement and repair regulations are well thought out. However, the basic dock regulations for dimensional standards appear to use maximization rather than minimization. We recommend consulting with Ecology on the issue, and reviewing the recent Sammamish SMP decision. **32.54**
- It is not clear whether multi-family development and other non-water-dependent uses can install a dock under the proposed SMP. The SMP Guidelines are very clear that such cases are not allowed. **32.55**

Review Processes and Exemption Review

We are very impressed with the description of the different processes. It is the most accurate description we have observed in reviewing many SMPs. All parts are covered and correctly described. **32.56**

Mitigation Sequencing

Proposed Section 29.25E.060(D) discusses mitigation sequencing. It includes the sequence, but it is only applied when a mitigation plan is required, which is not for all development. The SMP Guidelines require all development to use mitigation sequencing, which implements the SMA policy. Paragraph 2 should come before paragraph 1 and apply to all development, and then mitigation plan requirements can be described afterward. **32.57**

We recommend that the mitigation plan should be required whenever compensatory mitigation is needed, which will be for almost all development. Specifically, you can only avoid compensation when you totally avoid impacts. Even minimization, by definition, only minimizes and leaves impacts to compensate for. We also recommend that the plan requirement include specific statements about providing compensation for impacts remaining after avoidance and minimization. An alternative is that compensatory mitigation could be described in some other application document – landscape plan, etc. – but that requires that the landscape plan be required for all development. **32.58**

The sequence listed in paragraph 2 does not match the sequence in the SMP Guidelines and needs to be changed. There is an attempt to group sequence items. But compensation is grouped with "rectifying" and "reducing" both of which are forms of minimization. We recommend not using the proposed hierarchy, and reverting to the Guidelines version of mitigation sequencing. **32.59**

Trails and Promenades

Trails and Promenades have no inherent dependence on the water, unless they are providing access to a water dependent activity. Like other uses, they should be required to "control pollution" and "prevent damage to the environment" as the SMA Policy requires. Consequently, they should be located outside the buffer, including science-based buffers for intact areas, like other development must do, except for hardship situations. They can then provide spur trails to the water when needed. All impacts still have to be compensated for. **32.60**

Restoration Planning and Cumulative Impacts

While the draft SMP is one of the better ones we have reviewed, it still provides extensive options for allowing new impacts to shoreline ecological functions. These impacts must be identified in the **32.61**

Cumulative Impact Analysis. Furthermore, these impacts must be compensated for by the City in its Restoration Plan, and neither documents appear to address and compensate for them.

Thank you for considering our comments. If you require additional information please contact me at dean@futurewise.org or 509-823-5481.

Sincerely,

Dean Patterson, Shoreline Planner
Futurewise

Heather Trim, Urban Bays & Toxics Program Manager
People For Puget Sound

Recommendations for No-Net-Loss of Ecological Functions

Including Cumulative Impacts Analysis and Restoration Planning

May 2011

Contact: Dean Patterson - dean@futurewise.org. Phone: 206-343-0681. Web: www.futurewise.org.

Note: this document may have an updated version, please check our website.

Introduction

Futurewise staff has spent over two and a half years actively reviewing and participating in many Shoreline Master Programs. We have seen many different examples of how to do a Shoreline Master Program (SMP) and the documents needed to support it. While we have seen good examples, we have also seen many problems. More importantly we have seen patterns in how these problems come into being, and want to share them with those interested in developing good SMPs. We have boiled down and consolidated our observations into a series of guidance documents that discuss the requirements for developing Shoreline Master Programs (SMPs), the important consequences of those requirements, pitfalls we have observed that should be avoided, and our recommendations for implementing the many different requirements at the same time.

This document describes the requirements for no-net-loss of ecological function in the Shoreline Management Act (SMA) Policy and SMP Guidelines.[1] It focuses on providing a practical way of developing the Cumulative Impact Analysis (CIA) and the Restoration Plan. An accurate understanding of the cumulative impacts analysis and restoration planning requirements is critical to ensuring that the SMP covers all the impacts possible, because the jurisdiction must compensate for any impacts to ecological functions allowed by the SMP.

Framework of Protecting Ecological Functions

One of the primary functions of the Shoreline Management Act (SMA) is to protect the ecology and natural character of the state's shorelines, as required in RCW 90.58.020. Unfortunately, this policy has not been fully implemented resulting in the degradation of shoreline resources over the last 30 years.[2] The SMA policy protecting ecological functions now permeates all areas of the updated SMP Guidelines through the concept of "no-net-loss of ecological functions," whereby any adverse impacts that are allowed have to be compensated for. The overall requirement for protecting functions is found in WAC 173-26-186(8), which provides a framework for protecting ecological functions composed of several pieces of work, all of which are interdependent on each other. ***It is critical to understand*** that the CIA and restoration plan are not stand-alone requirements that are separate from each other. They are part of the larger requirement to protect ecological function and must all work together. The requirement to protect ecological functions includes the following parts:

- An accurate inventory and characterization of ecological functions is needed, including identification of areas with degraded and intact ecological functions, as emphasized in the 2011 changes to the SMP Guidelines. It is the fundamental component used in identifying the jurisdiction's remaining intact areas so they can be protected.[3]

---

[1] Despite being called 'Guidelines,' the SMA, in RCW 90.58.080(1), requires that shoreline master programs shall be consistent with the SMP Guidelines.

[2] For a description of the adverse impacts of development on Puget Sound, please see Mary H. Ruckelshaus and Michelle M. McClure coordinators, Sound Science: Synthesizing ecological and socioeconomic information about the Puget Sound ecosystem pp. 57 – 59 and pp. 68 – 72 (Prepared in cooperation with the Sound Science collaborative team. U.S. Dept. of Commerce, National Oceanic & Atmospheric Administration (NMFS), Northwest Fisheries Science Center, Seattle, Washington: 2007). Accessed on April 30, 2011 at: http://www.nwfsc.noaa.gov/research/shared/sound_science/index.cfm

[3] WAC 173-26-201(3)(d)(i)(E).

- Protecting functions by "designing" mitigation sequencing into the environments, policies and regulations of the SMP, including directing development away from intact areas and establishing specific standards that require individual projects to avoid and minimize impacts as much as possible, and then compensate for remaining impacts. Typical impacts from all types of development need to be addressed. After comparing the typical development impacts with the regulations, the gaps in protection are the basis for determining what impacts are allowed or not allowed by the SMP.
- Performing a Cumulative Impact Analysis is required to account for all the sources of degradation. It reviews gaps in the regulations to determine what impacts they allow, identifies non-regulatory impacts, and accounts for all impacts cumulatively. For the impacts allowed by the SMP regulations, the jurisdiction must either change the regulations to eliminate the impacts, or compensate for the impacts itself – generally through the Restoration Plan.
- Restoration Planning identifies ways to compensate for the remaining impacts allowed by the SMP, to compensate for the other sources of degradation, and otherwise identify ways to ensure the ecological functions of the shoreline are on an overall trend toward improvement.

Accounting for ecological functions in the CIA may seem like an esoteric exercise to many people. A good way to think of it is as an indicator of how protective the SMP is – a very protective SMP leaves few impacts to account for. It helps to think of the CIA conceptually in terms of ***balancing the budget*** of mitigation sequencing within the SMP. This is similar to balancing a family budget, where you try not to spend your money unnecessarily, and if you spend money, you need to replace it to keep the budget balanced. The CIA keeps track of impacts in a similar manner - the SMP should avoid degrading shoreline functions, and if it does allow degradation, the jurisdiction must replace the losses.

When the entire SMP update effort is performed well, (1) the SMP should be very protective, leaving few impacts after development review; (2) the CIA should identify the actual impacts the SMP is allowing; and (3) the Restoration Plan should provide the compensatory mitigation for those losses. This guidance document describes a logical path through the state requirements in order to ensure no-net-loss of ecological functions, and provides practical steps in developing the CIA, which are summarized below, and discussed in detail at the end of this document:

1) Compare common impacts of development with the SMP regulations.
2) Establish shoreline analysis segments.
3) Compare development allowed in intact areas.
4) Compare development allowed in existing developed areas.
5) Determine impacts allowed by the buffer system.
6) Determine if impacts will be reduced by "likelihood" considerations.
7) Determine impacts from other sources of degradation.
8) Accumulate all impacts from all sources of degradation.
9) Compensate for the degradation using the restoration plan.

Fundamental Obstructions to Ensuring No-Net-Loss

One of the primary problems we have observed to the development of good SMPs is the failure to accurately identify all the impacts of development because of an incomplete understanding of impacts, mitigation, compensation and restoration. This in turn means that cumulative impacts cannot be accurately measured. Throughout this document we discuss the many different permutations of the problem, and why they do not meet the SMA or SMP Guideline requirements. In our many discussions with planners we have observed these permutations in almost all jurisdictions, though of course some have fewer than others. They are:

- Assuming that vague statements of no-net-loss will prevent impacts
- Assuming that conversion of intact areas has no impacts
- Not considering the impacts on fish and wildlife of human presence in areas that previously had little or no human presence

- Assuming that degraded buffers have no functions to impact
- Assuming that degraded buffers can prevent impacts
- Assuming that avoiding additional damage to degraded buffer vegetation equates to having no impacts
- Assuming that meeting degraded buffers prevents impacts
- Assuming that meeting small buffers prevents impacts
- Assuming that waiving buffers for some development has no impacts
- Assuming that only minimization standards will prevent impacts
- Being unwilling to accurately identify impacts since they require compensation by either the project or the jurisdiction, which is financially or philosophically objectionable
- Excluding cumulative impacts from some development by claiming it is "unlikely," even though it is still allowed in the SMP

This problem has been prevalent for the last 30 years. Historically, development impacts have been largely un-mitigated. Even when specific standards were included, they were mainly limited to minimization, they rarely included using alternatives that avoid causing impacts, and almost never required compensatory mitigation for the remaining impacts. Even today, as an example, jurisdictions typically do not require the replacement of buffer vegetation for new road and utility crossings. Similarly, docks, boat ramps, access paths, bulkheads and even entire residences are typically allowed with no compensatory mitigation. There is a subconscious assumption that using small buffers, or just meeting minimization standards, or any of the other incorrect assumptions results in no impacts, and no compensatory mitigation is required from the development. This has resulted in the spiral of degradation we have historically experienced and continue to experience. Many jurisdictions are continuing this pattern by using vague statements of protection instead of specific standards that actually result in protection.

The new SMP Guideline's requirement to account for ecological functions is a result of this historic unwillingness or inability to require projects to provide full mitigation. Consequently, there will also be inherent resistance to accounting for impacts to ecological functions – beginning with establishing a protective SMP. The "framework" for protecting ecological functions in the SMP Guidelines causes two disincentives to preparing an accurate CIA that must be carefully understood and prepared for before developing the SMP. First, jurisdictions do not want to establish stricter regulations on development, because they are unpopular for financial or philosophical reasons. Second, jurisdictions do not want the financial responsibility for the restoration projects needed to compensate for the impacts allowed by the SMP. These disincentives set up a dynamic that either consciously or unconsciously will strongly encourage the development of inadequate CIAs, as follows. If the jurisdiction leaves the regulations lenient, then they have to pay for restoration of lost ecological functions. If they make the regulations more stringent, they have to make unpopular decisions. Thus there are incentives to establish less protective regulations, but still claim there are no impacts from the regulations so they don't have to compensate for them.

> **Pitfalls to Avoid: Don't attempt to "fudge" the CIA to cover for a poor SMP. It is too easy to identify actual impacts that are not accounted for.** We have observed that some CIAs claim there are no lost ecological functions, even though the SMP is fundamentally structured to allow impacts. These SMPs typically include the above list of unaccounted-for impacts, they fail to identify and compensate for even the most obvious impacts, they allow conversion of intact areas, they provide nuanced exceptions from protection measures to allow more development, and they provide no specifics about replacement of lost functions. These SMPs are often accompanied by vague statements of "no-net-loss of ecological functions," and then assuming that means there will be no cumulative impacts. This is akin to a child wishing for good grades without actually doing the studying and work needed to get good grades – wishful thinking does not accomplish the task

Another major problem regarding CIAs we have encountered is a mindset with a perceived disconnection between "mitigation" and "restoration." This distinction seems to originate in the idea that restoration and mitigation are exclusive from each other; thus mitigation is only fixing damage from a new project, while

restoration is only fixing damage from past projects or other degradation. The result is a mindset that new development cannot be required to restore or improve degraded conditions it did not cause. When present, this mindset pervades the development of the SMP, CIA, and Restoration Plan, and results in a Restoration Plan with little relationship to the actual SMP and CIA it is supposed to support. At its worst, the effect is a black and white distinction that presumes the Restoration Plan must be completely separate from the SMP and CIA.

Because of this disconnection, (1) the Restoration Plan barely mentions the SMP regulations, if at all; focusing instead on restoration projects; and (2) the CIA is not allowed to accurately identify impacts that the restoration plan could compensate for, regardless of whether the SMP is protective or not. The outcome of this mindset is that the concept of "restoration" is not allowed in the regulations of the SMP – it has to be limited to the Restoration Plan. Furthermore, the idea of "mitigation" must be limited to the SMP and cannot be considered in the Restoration Plan. However, the SMP Guidelines do not distinguish restoration and mitigation as exclusive from each other. Rather the restoration outcomes of SMP regulations and other regulations are explicitly considered to be part of restoration planning, as discussed in the section on restoration planning. Neither is there a statement that mitigation cannot improve ecological functions - in fact, the Guidelines recognize that restoration is a tool that can be used to mitigate the adverse impacts of a development.[4]

The framework for protecting ecological functions is composed of items that are all interdependent on each other. If one piece of the framework is disconnected, the framework can't function to protect ecological functions. Disconnecting the Restoration Plan severely limits the jurisdiction's ability to meet the no-net-loss of ecological functions requirement.

The problem with disconnecting the CIA and SMP from the Restoration Plan is that it effectively eliminates possibly the most common way to compensate for impacts - out-of-kind mitigation. And since many impacts cannot be directly compensated for easily (i.e. new armoring to protect a residence, or shading from a new dock), this mindset encourages ignoring those impacts. Out-of-kind mitigation can improve degraded conditions, especially for impacts to ecological functions that cannot be directly replaced; for example, enhancing degraded vegetation to compensate for dock shading, shore armoring, or a heavily used trail.

Two extreme reactions can help convey the extent of the problem created in accounting for ecological functions caused by this mindset. These examples also seem to incorporate a philosophical opposition to implementing the SMA policy and SMP Guidelines.

1. Some jurisdictions have attempted to use the false distinction between restoration and mitigation to pervert the requirement of no-net-loss of ecological functions into a standard that prevents improvement of ecological functions with statements such as: "Mitigation required for a project shall not result in an increase in ecological functions above those existing at the time of development." This is an incorrect statement. No-net-loss is a minimum, as WAC 173-26-221(5)(b) requires: "Master programs shall contain policies and regulations that assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources." Increased function is allowed.

2. We have even observed one jurisdiction that included a blanket SMP statement similar to the following: "A project meeting the SMP development standards establishes the presumption that there will be no-net-loss of ecological functions." Even with a very protective SMP (which was not the case), such a statement cannot be true.

[4] As one example, WAC 173-26-241(3)(d) explicitly provides in part that "Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate."

Mitigation Sequencing Must Be Built Into the Structure of the SMP

Before describing the actual CIA and Restoration Planning requirements, it is critical to understand their source in the SMA policy and SMP guidelines. This is summarized below.

The Shoreline Management Act (SMA) voter approved policy statement in RCW 90.58.020 lists a primary policy objective of the act [with emphasis]: "This policy contemplates protecting against adverse effects to the public health, ***the land and its vegetation and wildlife, and the waters of the state and their aquatic life***, while protecting generally public rights of navigation and corollary rights incidental thereto." Thus, while new development is allowed, it must protect natural functions and ecological features, and the public's interest in health and navigation. ***Note that*** not even water-dependent uses are listed as being equal to these items. Water dependent uses are discussed in detail in our guidance document dealing with use limits and preferences. This policy is echoed by the policy paragraph that provides particular protection for Shorelines of Statewide Significance, which establishes a list of preferences for both the long term protection of the public interest, and protecting the natural character and functions of these shorelines.

In addition, the SMA policy provides that "[p]ermitted uses in the shorelines of the state shall be designed and conducted in a manner to ***minimize***, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."

These two principles are implemented in the SMP Guidelines through requirements for no-net-loss of ecological function and mitigation sequencing. Regarding ***no-net-loss of ecological functions***, the Guidelines require that: "Local master programs shall include policies and regulations **designed** to achieve no net loss of those ecological functions."[5] Note that the requirement to "design" the SMP to accomplish no-net-loss is restated in four other locations as well, for uses, modifications, and cumulative impacts.[6] The no-net-loss requirement is accomplished using the concept of ***mitigation sequencing***,[7] whereby the first task of mitigation is avoidance of impacts, the second task is minimization of impacts, and the third is compensation for remaining impacts. Stated another way, allowing development to impact the shoreline is supposed to be the last option, not the first option. WAC 173-26-221(5)(b) makes that clear, providing [with emphasis]: 'Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions."

Of critical importance in understanding mitigation sequencing is that the word "mitigation" does not mean replacement of lost functions - that is "compensation" which is the last option. Many people confuse the terms, which then implies that performing mitigation means jumping straight to compensation and replacement before using avoidance and minimization. But compensatory mitigation for damage done is not the same as "prevention of damage to the natural environment," which is an important distinction to qualify as a preferred use, as discussed in detail in our guidance document dealing with use limits and preferences.

"Designing" an SMP to accomplish the no-net-loss principle means "designing" the different components of the SMP using mitigation sequencing. The SMP Guidelines include requirements for several components that,

---

[5] WAC 173-26-186(8)(b) under Governing Principles of the Guidelines relating to ecological functions; and implemented in WAC 173-26-201(2)(c) under Basic Concepts.

[6] (1) Governing Principles for protecting ecological functions in WAC 173-26-186(8)(b)(i),
(2) General principles for all modifications in WAC 173-26-231(2)(d),
(3) General principles for all uses in WAC 173-26-241(2)(a)(iv),
(4) Cumulative Impacts Analysis requirement in WAC 173-26-201(3)(d)(iii).

[7] WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions; and implemented in WAC 173-26-201(2)(e) under Basic Concepts, Environmental Impact Mitigation.

if implemented correctly, accomplish mitigation sequencing at different levels within the SMP. These components include:

- Designating environments.
- Placing limits on uses and modifications.
- Establishing buffers (or setbacks with vegetation management) based on science.[8]
- Developing regulations specific to different types of development.

Each of the above components is a subject of one of our Guidance Documents, each of which describes how to design mitigation sequencing into the element. Designing each components to avoid and minimize impacts, and then including specific standards for compensation of remaining impacts will result in an SMP that is structured to prevent the loss of ecological functions as much as possible.

There are two important points to keep in mind when preparing an SMP: (1) the rule of liberal construction, and (2) the requirement to rationally and carefully plan. When implementing and interpreting typical laws we use strict construction, but for shoreline law we use liberal construction (as required by RCW 90.58.900) "to give full effect to the objectives and purposes for which it was enacted." This means that when shoreline laws are interpreted, the correct outcome is the one providing more protection to shorelines rather than the one providing less protection. The legislative findings in the SMA policy statement (RCW 90.58.020) identify the "clear and urgent demand for a ***planned, rational, and concerted effort*** … to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." This statement has clear repercussions, in developing an SMP because strategies that provide little detail and vague standards, or that do not address certain types of development are not undertaking a "planned, rational, and concerted effort". Rather, such an approach is planning by default, without careful consideration, and accomplishes the opposite of the SMA policy intent.

Pitfalls to Avoid: Don't rely on vague statements of protection, but rather design specific regulations for all types of development. Some jurisdictions have attempted to meet the no-net-loss of ecological function requirement by simply repeating the no-net-loss principle in the regulations for the different types of development. In turn, they typically include few other regulations, establish few use limits, and make few distinctions in mapped environments. Aside from not meeting many other requirements, such an approach makes it uncertain that impacts will even be identified, let alone mitigated at the project stage. Such uncertainty cannot be accounted for in the CIA for several reasons:

- It defers protection measures to an undefined later date during project review.
- It does not acknowledge the common impacts of different types of development as required by the Guidelines (or worse, even assumes there are no impacts).
- It leaves protection measures vague and undefined, rather than "designing" them to protect ecological functions, as required by the Guidelines.
- It leaves the project review open to tampering by influential people pressuring either to not acknowledge impacts (since are not identified in the SMP), or to not develop specific mitigation.
- It assumes future staff will have the time and expertise to understand the impacts, or at worst assumes that untrained staff just relies on the project consultant without checks and balances.

This is not the intent of the SMP Guidelines, nor the SMA legislative intent to plan carefully. The SMP and its array of policies and regulations ***are themselves to be designed*** to accomplish no-net-loss of ecological functions, not simply to restate the principle over and over. Vague standards of protection have been in place since the inception the SMA (and for critical areas the GMA). But such a strategy has allowed degradation for 30+ years (and 10+ years for critical areas). A famous quote says: "If you keep on doing what you've always done, you'll keep on getting what you've always got." [W. L. Bateman]. It is critically important to establish specific standards that actually address impacts rather than relying on the historic approach of vague protection statements that plan by default. Specific standards accomplish

[8] WAC 173-26-221(5)(b).

mitigation sequencing, and are required in the SMP Guidelines provision to protect ecological functions in WAC 173-26-186(8)(b)(i) [with added emphasis]: "Local master programs shall include ***regulations and mitigation standards*** ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline."

Pitfalls to Avoid: Don't "balance" away shoreline policy to accommodate development.
WAC 173-26-186(9) reads [with added emphasis]: "To the extent consistent with the policy and use preference of 90.58.020, this chapter (WAC 173-26), and these principles, local governments have reasonable discretion to balance the various policy goals of this chapter..." This is similar to the implementation statement in the SMA policy, in which preferences and priorities are established, but only in the implementation of the policy itself. (See our guidance document regarding use limits and preferences for a detailed discussion.) However, some jurisdictions have used the "balancing" phrase by itself as an excuse: (a) to designate intact areas with development –oriented environments that will allow them to be converted to human uses; (b) to allow development in the buffer that has no need to be in the buffer, and without regulations to accomplish mitigation sequencing; and (c) to allow a broad range of development they desire (i.e. recreation facilities, trails, public access, residences, or even commercial uses) in protective environments in preference to the SMA policy preferences. While doing so inherently causes a loss of functions, they do not acknowledge these inherent impacts, nor require specific compensation for the losses, nor account for the losses in their Cumulative Impacts Analysis. Such a use of the "balancing" clause selectively ignores the requirement to be consistent with the policy to protect ecological functions. The facilities they desire may be allowable, but they must still protect shoreline ecology to the extent feasible, and provide compensation for impacts to functions.

Requirements for Cumulative Impact Analysis

The basic principal of no-net-loss is that any impacts that are allowed have to be compensated for. Before discussing the requirements for cumulative impact analysis, it is useful to describe how compensation should happen in conceptual terms.

How do you compensate for impacts? In both the context of individual projects and the CIA and Restoration Plan, many people have asked us how you compensate for lost functions after you do avoidance and minimization. The question comes from understanding that some functions are difficult to mentally grasp and understand for non-scientists (for example, sedimentation rates, chemical interactions, etc.) and that there can be dozens of different functions. Most people also understand that particular natural features provide a group of functions. The clue for how to compensate for them comes from the Policy of the SMA, which is to protect and restore the ecology and natural character. Thus, when individual or groups of ecological functions that are derived from natural features are eliminated or degraded to a lower level, they need to be replaced with natural features that perform the lost functions. Replacement compensation should always use more natural options in preference to less natural options, and should take place at double or triple the area (or other unit) to compensate for failure rates, and for the age/maturity of the feature. Of course replacing lost vegetation on-site when the site is already intact is nearly impossible, and compensation must probably be done off-site.

Thus for example, installing an access to the water will displace intact or degraded vegetation and inject human activity into the buffer area that will impact or drive off fish and wildlife. The loss of functions would be compensated for by recreating new buffer vegetation area. On a degraded site, these impacts can be compensated for by re-establishing buffer vegetation that performs similar ecological and habitat functions. On the other hand, it is inappropriate to replace functions derived from natural features with functions derived from artificial features; such as eliminating buffer vegetation and replacing the bank stability functions with shore armoring. Lastly, some features are very difficult to replace. When straightforward compensation is not possible, "out-of-kind" mitigation (replacing lost functions with different functions) must be used, as described earlier in this document. And if the functions can't be provided on the site, then "off-site" mitigation must be used.

The requirement for the CIA is found in the Governing Principle of the SMP Guidelines (WAC 173-26-186(8)) that requires the protection of ecological functions. The CIA is just one component in protecting ecological functions. Unlike other parts of the SMP Guidelines, there is little direction for how to perform a Cumulative Impacts Analysis. The two sections that discuss it are a short section in WAC 173-26-186(8)(d), and approximately a page of implementation text in WAC 173-26-201(3)(d)(iii). These mainly require that jurisdictions have to evaluate cumulative impacts and ensure there is (A) no-net-loss of ecological functions, and (B) no-net-loss of other shoreline values. Rather than copying the entire text, the few pieces of specific guidance are described and discussed below.

The SMP and CIA must "fairly allocate the burden of addressing cumulative impacts among development opportunities." [9]

Since allocating the burden to adjacent property owners, or owners across town, or other cities/counties would be unfair, there are really only two options – either the development project or the jurisdiction must pay the cost of compensating for the impacts.

The **first** and most obvious option is to allocate the burden onto the development causing the impacts. This is also the primary intent of mitigation sequencing - both in the structure of the SMP, and in the permit requirements for the development. This means that the SMP environments and regulations must be very good at preventing the impacts, identifying the likely impacts that will happen, and requiring compensation for the impacts that are allowed. Even an excellent SMP will allow some impacts that cannot be mitigated on the site.

The **second** option is the default option. Whether the SMP is good at preventing impacts or not, the burden of compensating for all the remaining impacts allowed by the SMP (after permits, exemptions, etc.) falls on the local government that allowed them (essentially the local taxpayers).

> **Pitfalls to Avoid: Don't compensate for impacts allowed by the SMP with restoration others are paying for.** In our discussions with planners, we have encountered the viewpoint that even though the regulations allow impacts, the restoration plan projects make up for the impacts. However, those restoration plans almost exclusively consist of projects implemented by other organizations, which are typically funded by state and federal grants. Such an approach unfairly allocates the burden of the jurisdiction's inadequate SMP onto state and federal taxpayers, and dodges responsibility for the SMP impacts. It also undermines our restoration and salmon recovery efforts, and consumes or negates the benefits those efforts are accomplishing.

"To … assure no net loss of shoreline ecological function … requires assessment of how proposed policies and regulations cause and avoid such cumulative impacts." [10]

A Cumulative "**Impacts**" Analysis requires one to analyze the impacts that the regulations are **allowing** (not what they are preventing), to determine if there will be a loss of ecological function. This means looking past the SMP standards that are listed to see what is still allowed - what is NOT covered in the SMP. This entails comparing common impacts of development with the regulations in the SMP, comparing uses allowed to the existing ecological conditions, and applying the impacts allowed by the regulations to the areas in which the uses are allowed. More specific details are found at then end of this document.

This also means that staff needs a thorough understanding of the impacts of different types of development, from roads and bridges, to docks, to bulkheads, to residences, to commercial and industrial uses. Each has

[9] WAC 173-26-186(8)(d)
[10] WAC 173-26-201(3)(d)(iii)

impacts particular to the type of development - partly based on the construction methods, partly based on the nature of the use, and partly based simply on their displacement of natural features.

Pitfalls to Avoid: Do not simply list SMP protection standards. Some CIAs we have reviewed are largely a recitation of the protection standards. Such an approach results in a Cumulative "***Protection***" Analysis, which does not meet the requirement.

"For such commonly occurring and planned development, policies and regulations should be designed without reliance on an individualized cumulative impacts analysis." [11]

As we have stated before, the SMP Guidelines require that environments, policies, and regulations are themselves to be designed to mitigate commonly known impacts. Jurisdictions are not supposed to avoid including the specific regulations designed to mitigate impacts in favor of vague statements of "no-net-loss." Doing so would mean that the CIA has no concrete standards on which to base a determination that common impacts are mitigated. Since the cumulative impacts of an SMP are those not covered by the SMP regulations, excluding specific standards that cover common impacts turns ALL the impacts of a project into cumulative impacts. Thus when a jurisdiction performs a no-net-loss of ecological functions assessment on a project (having only the vague no-net-loss standard) it is also performing an individualized cumulative impact analysis.

Pitfalls to Avoid: Do not avoid designing regulations that address all the common impacts of different types of development. Some SMPs use vague statements of no-net-loss rather than designing the environments and regulations to deal with common impacts. As noted above, relying only on vague no-net-loss statements is the same a performing an individualized cumulative impacts analysis on project-by-project basis, which is both contrary to this requirement and allows a net loss that is not accounted for in the CIA. In addition, it is easy to identify common impacts that are not addressed in these SMPs. As an example, one jurisdiction's draft SMP includes 5 or 6 standards for a particular type of development. One is a general statement to result in no-net-loss, but the rest are just reminders to follow other laws. The result is effectively only one standard with no specificity to address common impacts.

Furthermore, since the resulting CIAs have little or no specific standards to base reviews of cumulative impacts, these SMPs have no SMP-level cumulative impact analysis being performed. But stating so would mean the burden of addressing the cumulative impacts falls on the jurisdiction. Thus there is an incentive for the CIA to be written stating that the regulations are adequate and that there are no cumulative impacts.

"For … un-anticipatable or uncommon impacts that cannot be reasonably identified at the time of master program development, … regulations should use the permitting or conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss of ecological function of the shoreline after mitigation." [12]

While the Guidelines require the SMP to address common impacts, all projects can have unanticipated impacts. As we have pointed out, the regulations have to do more than restate the no-not-loss principle over and over, and accomplishing the principle requires mitigation sequencing. However, a "general" no-net-loss standard and mitigation sequencing standard is still needed to cover those unanticipated and uncommon impacts in project review. While the requirements are important to understand, our observation is that these statements are typically common in both good and bad SMPs – and thus not usually a problem area.

[11] WAC 173-26-201(3)(d)(iii)
[12] WAC 173-26-201(3)(d)(iii)

Pitfalls to Avoid: Don't avoid including no-net-loss and mitigation sequencing regulations in general standards. We have observed only a few jurisdictions that do not meet this requirement, since it is so easy to accomplish, but there have been some that have attempted to place both standards in non-regulation locations in the SMP, which takes them out of the normal realm of permit review. They need to be actual regulations.

Consider "reasonably foreseeable" development, but acknowledge that there are "practical limits when evaluating impacts that are prospective and sometimes indirect." [13]

Pitfalls to Avoid: Don't exclude impacts of development that is "unlikely" - estimate them. In our reviews of CIAs and discussions of cumulative impacts with many planners, the clauses in the heading above provide one of the most common excuses for avoiding discussion of all the cumulative impacts actually allowed by the SMP impacts. The claim is that even though the SMP may allow extensive types of development, and even the conversion of intact areas, such development is "unlikely" or is not "reasonably forseeable" and the cumulative impacts are excluded from consideration. Such a strategy is logically flawed for two reasons. (1) It avoids the very intent of the requirement (considering the accumulation of impacts over time), which is one reason our shorelines are as degraded as they are. (2) Unlikely development **IS** reasonably foreseeable, by estimating the "likelihood" of the development, as described below.

The most important point in considering "unlikely" impacts is that development impacts that are allowed in the SMP but are unlikely cannot be ignored completely in the CIA, they can only be reduced. Estimating the "unlikely impacts" of certain types of development is not that difficult using professional judgment. If the jurisdiction intends to reduce the impacts to be considered in the CIA based on the low likelihood of the development, three tasks are needed. First, the area where the impact is allowed needs to be determined. Second, the impacts allowed under the SMP regulations if the development happens need to be estimated. Third, the likelihood that the development will happen needs to be determined using a percentage amount anticipated to occur over a given period of time (zero or functionally zero are not acceptable since the development is not prohibited). In establishing the percentage, one has to acknowledge that given enough time, 100% occurrence will take place for some types of development and some areas (especially cities). The first two tasks can be used to estimate the total potential impacts. The "likelihood" percentage can then be used to reduce the impacts to be considered.

For linear facilities, the process would be different, since impacts can vary widely. But they are still estimable. Impacts from linear facilities allowed parallel to the shoreline have much greater impacts than the occasional water crossing (mainly over streams and wetlands), though crossings can also have major impacts when they are undersized and numerous. Since the Guidelines require utility and transportation facilities to be outside shoreline jurisdiction whenever possible, most jurisdictions include regulations that prohibit new facilities parallel to the shore, and regulations requiring that new service line and road crossings use the most direct route across. This eliminates the need to consider parallel facilities as a cumulative impact. Then public road and utility crossing impacts can be evaluated based on road and utility main patterns and subdivision requirements. And impacts of private crossings on streams and wetlands (for driveway bridges and utility service lines) can be evaluated by estimating the existing lot patterns and numbers in proximity to existing roads. The number of possible driveway bridges will depend on regulations for both existing lots and new subdivision lots (1) to require the use of alternative access points that don't need a new crossing, and (2) to require sharing access roads, utility crossings, and bridges with nearby lots. Otherwise the CIA needs to consider that each lot will build a new individual driveway, bridge, and service line over the stream - which is the existing pattern for many streams where roads already run parallel and every lot on the opposite side of the stream has a private driveway, bridge, and utility line crossing. Once these potential impacts that the SMP

[13] WAC 173-26-186(8)(d) & WAC 173-26-201(3)(d)(iii)

allows are estimated, a likelihood percentage can be assigned as described above to arrive at the amount of likely impacts to account for in the CIA.

These estimates will not be entirely correct, but they will be recorded so that future updates can check their accuracy with actual development, compare it with restoration projects the jurisdiction has undertaken, and then the jurisdiction can provide compensation for actual losses of ecological function in future Restoration Plans. The jurisdiction can then also use more accurate estimates in the future. Of course the Restoration Plan must have projects for the jurisdiction itself to use for this compensation.

"To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts ..." [14]

Pitfalls to Avoid: Don't avoid identifying actual impacts and designing regulations to address them. This requirement makes it clear that the CIA is dependent on the SMPs ability to prevent impacts. While the above statement is the most basic of the requirements for a CIA, we have observed many problems that impede the true assessment of cumulative impacts. All of these seem to have a common feature that is overlooked in SMP development - almost all development has impacts, and many developments have impacts that cannot be mitigated on-site. Many of the incorrect assumptions that obstruct the accurate assessment of impacts are discussed in detail below. As already pointed out, using vague standards of no-net-loss and excluding regulations that address the common impacts simply turns all project impacts into cumulative impacts. Yet the CIAs for SMPs that use vague statements do not account for the cumulative impacts. Even the CIAs for SMPs that do use detailed standards to address common impacts typically do not acknowledge some of these types of impacts.

Our guidance document "Shoreline Buffer Options That Work with Buffer Science" provides (1) summaries of several syntheses of science literature relating to buffers and vegetation, (2) a description of vegetation functions, (3) a discussion of the functions of degraded sites, (4) common impacts of new development, (5) common impacts of existing development, and (6) recommended options for developing buffer systems that logically flow from the science. The reader should read that document to supplement the descriptions of functions and impacts provided here.

Assuming that conversion of intact areas has no impacts. The most substantial losses of ecological function come when new development in largely intact areas (those that should have protective environments) displaces vegetation that provides ecological functions and wildlife habitat - both inside and outside the buffer. Few SMPs require the replacement of this habitat. Furthermore, while a project on a **degraded site** can provide compensatory mitigation on-site, how do you provide compensatory mitigation on an **intact site**? There are little or no enhancement opportunities – certainly not at the same scale of the development impacts. A more common situation is when SMPs allow development inside a largely intact buffer (for access, docks, driveways, bridges, utility crossings, water-dependent recreation, etc.). This has many of the same problems as for fully intact areas. Few SMPs require a trail, utility, or road crossing to replace the displaced buffer vegetation, as one example. In both cases where intact native vegetation is lost, the regulations need to require projects to provide compensatory mitigation, including the likely necessity of developing off-site mitigation.

Not considering the impacts on fish and wildlife of human presence. A more indirect impact is that the injection of human users into largely intact areas or intact buffers – even with relatively minor development like trails and docks – drives off fish and wildlife. Most people have experienced driving on a road and seeing wildlife. The animals may tolerate the presence of the vehicle, but when people get out of the car, the animals flee. Similarly, people who are avid fishers know that fish flee from human disturbances in and near the water,

[14] WAC 173-26-186(8)(d); with similar statements throughout this section and WAC 173-26-201(3)(d)(iii).

and on a dock. We have observed no SMPs that address this impact in their regulations. Mitigating for human intrusion will likely require out-of-kind compensatory mitigation, and possibly require off-site mitigation.

Assuming that degraded buffers have no functions to impact. While the above examples use relatively intact areas to demonstrate the point, even degraded areas have ecological functions that can be further degraded. Planners often equate degraded sites to having no functions to impact. On the contrary, the existence of lower levels of ecological function does not lessen the impacts of the development, it only reduces the maximum possible loss of functions caused by those impacts. Even converting lawn or degraded vegetation to sidewalks and roads further degrades those areas for ecological functions and habitat use.

Assuming that avoiding more damage to degraded buffer vegetation equates to having no impacts. Another version of the above assumption mistakenly equates development impacts to whether damage is directly caused to the vegetation, resulting in the approach that a project leaving degraded ecological functions in place is the same as having no impacts. This is incorrect. New development will have impacts whether vegetation is intact or degraded. But degraded vegetation will have a lower maximum possible loss of function.

Assuming that degraded buffer can prevent impacts. Some planners assume that meeting a degraded buffer (whether a small buffer or science-based buffer) width automatically means there will be no impacts. The science states that intact vegetation is needed to provide functions and mitigate impacts. Small buffers automatically allow impacts, and degraded science-based buffers cannot function fully and will allow impacts.

Assuming that meeting small buffer can prevent impacts. A slightly different version of the above example is when planners assume that meeting a small buffer width automatically means there will be no impacts. Small buffers are already degraded, even if the small width is well vegetated. The science shows that inadequate width buffers cannot perform functions or mitigate impacts. This assumption usually also comes with the assumption that unlimited additional development outside the small buffer has no impacts, which is incorrect.

Assuming that waiving buffers for some development has no impacts. We have observed a practice of systematically waiving buffer requirements for broad lists of facilities (one jurisdiction had 3 pages worth) – many of which can be placed outside the buffer without eliminating their function. We have seen this pattern in almost all jurisdictions regardless of whether buffers are intact or not, and use science-based widths or not. But it typically is not accompanied by any specifics about providing compensatory mitigation along with the development. Widespread examples include trails that could be placed outside the buffer or in the margins, allowing stormwater facilities to displace buffer vegetation, and sometimes even residential accessory facilities. Only water-dependent or water-related development should be allowed inside the buffer. Any other exceptions need to include criteria for avoidance and minimization, similar to Shoreline Variances and Conditional Use Permits. And all instances (water-dependent or not) should also include specifics about how to do compensatory mitigation for that kind of development.

Assuming that minimization standards prevent impacts. A common assumption is that minimization will prevent impacts. An example is that many dock regulations fall under this category. Minimization is a part of mitigation sequencing. By definition of the term, minimization only reduces impacts – it doesn't avoid them. Thus development that meets minimization standards must still compensate for the remaining impacts.

Contrary to the above assumptions, most SMP provisions will inevitably have built-in impacts, unless built-in mitigation is also required to eliminate most of the impacts. Eliminating impacts requires that the SMP (a) have a default position that, except for rare instances, development will have impacts, (b) require compensatory mitigation plans with each project, (c) focus the compensatory mitigation to enhance degraded conditions, and (d) use specific compensatory mitigation standards for different types of development.

Just a few examples are in-water and near-water development (docks, armoring, etc.), small buffers, and buffer reductions. Such provisions need to also have specific compensatory mitigation requirements to improved degraded conditions at the site. For example, small buffers and buffer reductions should be required to enhance degraded areas of buffer vegetation so that they function; and in-water and near-water facilities (docks, etc.) should be required to enhance vegetation or removed armoring, etc. Other examples of compensating for impacts can be found in our buffer options guidance document. Lastly, the remaining impacts that can't be mitigated on-site need to be compensated for in the Restoration Plan. Unfortunately, as we have pointed out, the easiest way for a jurisdiction to avoid responsibility for them is to write the CIA stating there are no impacts.

It is recognized that shoreline ecological functions may be impaired not only by shoreline development subject to the substantial development permit requirement of the Act but also by past actions, unregulated activities, and development that is exempt from the Act's permit requirements.[15]

In the many SMP Guidelines requirements to protect ecological functions, there are numerous references to accounting for impacts in the CIA from all the different sources. The previous section discussed the typically unmitigated impacts of new development. But existing development, unregulated activities, and exempt development also degrade shoreline functions. Our guidance document "Shoreline Buffer Options That Work with Buffer Science" discusses the impacts of both new and existing development in more detail.

While impacts of new development have a chance of being mitigated through the review of permits or exemptions, other sources of degradation are unmitigated – but the still need to be assessed and compensated for in the Restoration Plan. Without a method of offsetting these effects, shoreline wildlife will get displaced or driven off, habitat and native vegetation will slowly disappear, and shoreline waters will get slowly degraded. Other sources of degradation include:

- Ongoing impacts of existing development close to the water, including glare, noise, septic inputs, chemical use, sedimentation from development near shorelines, etc.

- The creep of un-reviewed activity and casual development near the water and in the buffer. This includes installing or expanding small landscape features that are on the boundary of needing a permit, such as extending cleared yard areas into native vegetation, paving unpaved paths, building small structures for which the jurisdiction does not review building permits, building rock landscaping walls, etc. This continual and gradual creep encroaches more and more on native vegetation, wildlife habitat, and ecological functions.

- Unenforced violations. Many jurisdictions do not enforce shoreline and critical areas violations for financial or philosophical reasons. Thus the system encourages violations and their often extreme impacts. Many SMPs have almost no description of the violation and enforcement process or consequences, yet we have observed no CIAs that account for violations. This issue is not a problem for SMPs with adequate enforcement provisions.

- Shoreline exemptions without adequate review processes and application of standards. Despite our comments, many jurisdictions refuse to describe in their SMP how they review exemptions. Exemptions must still meet the SMP standards, including the requirements for mitigation sequencing – especially compensatory mitigation. They must be reviewed in some manner – even in an abbreviated review. The SMPs have almost no description of the exemption process or requirements to qualify for an exemption. Actual compliance with SMP standards and exemption requirements is left unstated and at the whim of staff workload and experience. The CIA cannot account for impacts in such a situation, other than to

[15] WAC 173-26-186(8) – The overall protection of ecological functions requirement. Also found in several locations in the SMP Guidelines, including WAC 173-26-201(3)(d)(iii), WAC 173-26-201(2)(c), and others.

pretend there will be no problems. This issue is not a problem for SMPs with adequate descriptions of the exemption process.

- Upland stormwater inputs from non-shoreline areas will eventually enter shoreline waters. While stormwater regulations also apply in shoreline jurisdiction, their effect is mostly felt across the larger drainage basins. Today's stormwater regulations can largely control the impacts from new development. However, we have seen many CIAs that review stormwater mitigation in the Restoration Plan when it should be in the CIA. Stormwater regulations for new development are not really restoration, they are mitigation for very specific new impacts – avoidance, minimization, and compensation. Furthermore, they often require structural facilities that are allowed to degrade natural features like buffers. We have observed few CIAs that seriously discuss stormwater regulations in the CIA – they are typically in the Restoration Plan, where they don't belong. Similarly, few CIAs discuss the degradation of natural features allowed in the name of mitigating stormwater impacts.

Pitfalls to Avoid: Do not avoid considering other sources of degradation, and do not avoid thorough enforcement and project review regulations. While all sources of degradation are supposed to be analyzed, we have reviewed no CIAs that cover all of these issues. The best CIAs get most of them but the remaining impacts are uncompensated.

Requirements for Restoration Planning

The no-net-loss framework and cumulative impact analysis requirements include several important points related to restoration planning, as follows. The impacts from all sources of degradation must be compensated for in the Restoration Plan. The burden of compensating for impacts allowed by the jurisdiction cannot be unfairly assigned to other people or entities, nor can the benefits from other restoration programs be consumed by degradation allowed by the jurisdiction. Thus impacts need to be compensated for by projects the jurisdiction pays for. To both meet the SMP Guidelines and to reduce its costs for compensation, the jurisdiction needs to include enhancement of ecological functions as compensatory mitigation. If the jurisdiction includes specific regulations to require projects to compensate for all the impacts that they can, and the jurisdiction provides compensation for the remaining impacts, then the other restoration projects of other entities above and beyond compensating for impacts will keep the shoreline in a trend toward improvement, as the Guidelines require.

The key is to ensure that compensatory mitigation using enhancement of functions is included in the regulations, rather than avoiding doing so using the artificial distinction between restoration and mitigation. The SMP Guidelines do not distinguish restoration and mitigation as exclusive from each other. Rather the restoration outcomes of SMP regulations and other regulations are explicitly considered to be part of restoration planning. Neither is there a statement that mitigation cannot improve ecological functions, as we discussed earlier. While there are several references to restoration planning, there are two requirements that provide the most specific guidance relating to this problem. WAC 173-26-186(8)(c) includes the primary restoration planning requirement, stating [with emphasis added]:

> "For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals. These master program elements regarding restoration should make real and meaningful use of established or funded nonregulatory policies and programs that contribute to restoration of ecological functions, and should appropriately consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards."

WAC 173-26-201(2)(f) implements the Restoration Planning requirement. It's opening sentence states [with emphasis]:

> Consistent with principle WAC 173-26-186(8)(c), master programs shall include goals, policies and actions for restoration of impaired shoreline ecological functions. These master program provisions should be designed to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program.

The section goes on to list several steps to developing a Restoration Plan – in summary:

- identifying degraded areas and restoration opportunities,
- establishing restoration goals for those areas,
- identifying projects and programs that can contribute toward restoration – including both regulatory and non-regulatory as noted in the WACs above,
- identifying projects and programs that are needed to achieve restoration goals, and
- developing implementation and achievement mechanisms for restoration goals.

In reviewing many recent restoration plans, many of the problems we have observed stem from not implementing the following points (which are derived from the above requirements):

- The Restoration Plan is intended to describe how the jurisdiction will "achieve overall improvements in shoreline ecological functions over time" in the face of historic and future degradation.
- The Restoration Plan is supposed to identify and address the areas and functions that are degraded, as stated in the first sentence of WAC 173-26-186(8)(c). (For example, the sediment processes degraded by shore armoring, and habitat functions degraded by lost vegetation.
- The Restoration Plan is supposed to include both projects and programs that result in restoration.
- The Restoration Plan is supposed to include both regulatory and non-regulatory programs that result in restoration, as stated in WAC 173-26-186(8)(c).
- The Restoration Plan is supposed to include restoration outcomes from the actual SMP policies and regulations that the restoration plan is intended to support, as stated in the last sentence of WAC 173-26-186(8)(c).

As can be seen, SMP regulations ***are*** supposed to be considered in the Restoration Plan. Using the underlying assumption that "restoration" only applies to restoration projects and "mitigation" only applies to regulations has serious repercussions in the Restoration Plan and its relationship to the CIA:

1. Since regulations are usually not discussed, the focus is almost entirely on projects.
2. Since undertaking projects is expensive, the focus is on projects undertaken by other entities.
3. Since only a limited number of stand-alone restoration projects that cover a small fraction of the total degraded land are identified, they don't address the vast areas of degraded shorelines and degraded functions. The Restoration Plan will leave the degraded areas largely degraded.
4. Since the restoration projects are traditionally focused on the less developed locations, the functions they restore are unlikely to match the functions that are degraded.
5. Since projects are heavily emphasized and regulatory programs are not allowed to be considered under restoration, programs in general receive little attention or are ignored.
6. Since regulatory programs are not to be discussed, the Restoration Plan almost never discusses the actual SMP regulations
7. In the SMPs that do discuss programs, they typically limit the discussion to the jurisdiction's stormwater regulations or educational programs.
    - When stormwater programs are included, they usually only focus on the development standards (which is mitigation of new development rather than restoration), and do not discuss the restoration outcomes of the stormwater program – i.e. correcting pollution problems from existing development.

- Education programs are described as restoration, though most of the education subjects described focus on preventing damage rather than actual restoration. There is almost never specific restoration outcomes described.
- When the SMP regulations are discussed, it is typically that they exist rather than describing the restoration outcomes of them – i.e. enhancement that occurs from compensatory mitigation.

8. Since the Restoration Plan is not allowed to consider mitigation or include outcomes of regulations, it becomes necessary for the CIA to avoid documenting impacts from the regulations, even where there are obvious impacts allowed by an SMP.

Accomplishing the requirements for no-net-loss of ecological functions will take a broader approach than using a mindset that separates the SMP and CIA from the Restoration Plan. Avoiding this mindset and allowing the regulations to improve ecological functions avoids most of the problems listed above, and throughout this document. The idea that compensatory mitigation can result in the enhancement of functions is fairly elementary, yet compensatory mitigation is a regulatory measure. Whether the word "restoration," "enhancement", or some other term is used to avoid controversy is immaterial, as long as the intent is to improve degraded areas and thereby offset the adverse impacts of development and redevelopment.

Restoration planning is intended to improve degraded conditions over time. The most effective method of addressing these extensive degraded areas in a programmatic way is through the regulatory program, which functions jurisdiction-wide and will encounter degraded areas on a scale that is hundreds of times larger and more common than normal restoration projects. ***These are the actual degraded areas that are the very reason for the restoration planning requirement.*** Allowing enhancement in the regulations for impacts of new development can improve conditions in the actual degraded areas, though it will be slow. Our current degraded ecological functions across the state happened over decades - one project at a time. Similarly, improving them will take decades into the future - one project at a time.

Practical Steps to Developing a CIA

Preconditions for a Good CIA The points discussed in this document lead to practical steps that can be used in developing the CIA, but there are important preconditions to preparing a good CIA: knowledgeable staff and a protective SMP.

Even before beginning it is critical to appoint a qualified and knowledgeable staff to develop the SMP and CIA. Designing mitigation sequencing into the SMP is not difficult, but it does require that staff persons have knowledge of construction practices, and an understanding of their consequences. Specifically they should have:

- A scientific understanding of the particular shoreline area
- An understanding of the common impacts of various types of development
- An understanding of what the various mitigation techniques can and cannot do
- The ability to make careful judgments of the uncertainties of mitigation

As pointed out numerous times, the most important element in a good CIA is a protective SMP. Preparing the CIA means you have to consider all the impacts allowed by the SMP and accumulate them in your analysis. If well designed to incorporate mitigation sequencing, the SMP will have few remaining impacts that accumulate and have to be compensated for. If not well designed, there will be many impacts to account for, which are probably allowed across broad areas, making them very difficult to assess. Our other guidance documents discuss the pitfalls to avoid for different parts of the SMP in order to ensure they best capture and prevent impacts. The SMP should include the following:

- Protective environments need to be placed on the remaining intact areas.
- Use limits need to match the environments' intent and implement SMA preferences, especially to prevent the conversion of the remaining intact areas to human uses.

- Buffers need to protect existing vegetation and keep development away, and should be of a science-based width whenever possible.
- Regulations need to avoid and minimize common impacts for specific types of development.
- Regulations need to describe compensation for specific types of development.
- General standards are needed to require mitigation sequencing and no-net-loss ecological function for unanticipated impacts at the project level.
- Acknowledge the different impacts of development, and specifically avoid the assumptions that prevent accurate assessment of impacts that are discussed in this document.

If the SMP is protective, it is able to capture all the impacts that on-site mitigation can capture, leaving little for the CIA to account for, and reduces the burden of compensating for lost functions on the jurisdiction and its taxpayers.

Steps in Assessing Cumulative Impacts The CIA is not just a listing of the protection standards. It is an assessment of what impacts are allowed by the environments and regulations that accounts for the loss of ecological function. This means looking past the SMP standards to see what is still allowed – or more specifically, what is NOT in the SMP. Preparing the CIA entails comparing common impacts of development with the regulations in the SMP, and applying the allowed impacts to the areas the development is allowed. Below are more specific details:

1) **Compare Common Impacts of Development With SMP Regulations.** For the different types of uses and modifications that are allowed by the SMP (both in explicit use limits, and by default for not addressing uses), compare the typical impacts associated with that type of development to the SMP regulations for it. For example, compare common impacts of roads and bridges with the regulations for roads and bridges. When impacts are not addressed by the regulations, they become cumulative impacts that the jurisdiction must compensate for. Alternatively, and preferably, the regulations should be supplemented to prevent the impacts. Our guidance document dealing with development standards includes most of the common impacts that need to be addressed, along with recommended standards to do so. The impacts identified after comparing development impacts with the regulations will be the impacts that apply to all the shoreline areas where that type of development is allowed.
2) **Establish Shoreline Analysis Segments.** Divide shoreline areas into segments with consistent development patterns. With a carefully established environment system, environments should be relatively homogenous to help with the CIA analysis. But many SMPs we have reviewed broadly mix different development patterns in their environments, making the CIA assessment much more complex, and likely less accurate. For example, applying the same designation and use limits for the Rural Conservancy environment to both near-urban-density residential areas and nearly intact areas. These use limits would typically be established to allow development for the residential areas - not to protect the intact areas.
3) **Compare Development Allowed in Intact Areas.** Compare the development pattern in individual intact segments with what uses are allowed in the assigned environment. Intact areas that can be converted to human uses will have dramatic losses of functions that are nearly impossible to compensate for on-site, but must somehow be compensated for by the jurisdiction. Alternatively, the environment designation or use limits can be modified to prevent the loss. This issue applies to both intact areas inside and outside the buffer line. It applies to developed areas with an intact buffer of science-based width. And it applies to areas that are largely intact inside shoreline jurisdiction, but may be heavily developed just outside.
4) **Compare Development Allowed in Existing Developed Areas.** Compare the development patterns in individual developed shoreline segments with what uses and modifications are allowed in the assigned environment. Existing developed areas that are allowed to become more intense will also suffer losses of function due to increased use-area coverage and more intense activity. The loss will depend on how degraded the existing functions are in the developed area – some may be highly functioning, others may have low levels of function. Use limit systems that do not include use-intensity distinctions are left to assume an intense level of possible development. Residential or

recreational areas that can convert to commercial use will often become more intense. Commercial areas that can convert to industrial use will often become more intense. Low intensity recreation areas are often allowed to convert to higher intensity recreation use, or even commercial facilities. Undeveloped recreation areas are typically allowed to install trails which can be intensively used. Without explicit compensatory mitigation requirements, unaddressed impacts from these developments will be cumulative impacts that must be compensated for by the jurisdiction. This makes the regulations for the different types of development very important.

5) **Determine Impacts Allowed by the Buffer System.** Our buffer options guidance document discusses the consequences of different buffer system choices. The buffer system needs to be applied to all shoreline segments and compared to existing vegetation functions. Lost functions from areas that are inadequately protected need to be compensated for by the jurisdiction, unless the buffer system is altered to protect those functions.
6) **Determine if Impacts Will be Reduced by "Likelihood" Considerations.** We recommend that "likelihood" considerations be used sparingly or not at all. If the jurisdiction is intent on not considering the full impacts of what is allowed by the SMP, some assessment of the likelihood percentage must be performed and applied to the full area where those "unlikely" developments are to be allowed. The percentage cannot be zero or effectively zero, since the development is not prohibited.
7) **Determine Impacts From Other Sources of Degradation.** Estimate the impacts from:
   - Ongoing impacts of existing development
   - The creep of un-reviewed activity and casual development near the water and in the buffer.
   - Impacts of unenforced violations when jurisdictions do not enforce shoreline and critical areas violations.
   - Impacts from shoreline exemptions without adequate review processes and application of standards.
   - Impacts from non-shoreline upland stormwater inputs.
8) **Accumulate All Impacts From All Sources of Degradation.** The total impacts from all sources of degradation are the cumulative impacts that the jurisdiction must compensate for in the Restoration Plan.
9) **Compensate for the Degradation using the Restoration Plan.** The total impacts from all sources of degradation must be compensated for in the Restoration Plan by activities undertaken by the jurisdiction. The burden cannot be shifted unfairly to other entities, nor can the benefits from other restoration programs be consumed by degradation allowed by the jurisdiction. Restoration above and beyond compensating for impacts allowed by the jurisdiction that is provided by projects of other entities will keep the shoreline in a trend toward improvement, as the Guidelines require.

These steps still depend on a broader approach than either using a mindset that separates the SMP and CIA from the Restoration Plan, or not acknowledging all impacts if they are to accomplish the requirements for no-net-loss of ecological functions. With a protective SMP that focuses compensatory mitigation on enhancing ecological functions, the importance of the Restoration Plan is relatively low. The CIA can more easily account for impacts, and fewer impacts will remain from the SMP. The Restoration Plan can identify the enhancement outcomes of the specific compensatory mitigation regulations. And the Restoration Plan needs fewer projects and programs to offset both the remaining impacts from new development, and the other sources of degradation. But with a lax SMP that allows impacts, the importance of the Restoration Plan goes up dramatically since the jurisdiction must compensate for the impacts the SMP allows. And if it is disconnected from the CIA and SMP regulations, it is incapable of providing adequate compensation of the cumulative impacts.

Recommendations on Prehearing Written Comments

Establishing Shoreline Environments

May 2011

Contact: Dean Patterson - dean@futurewise.org. Phone: 206-343-0681. Web: www.futurewise.org.

Note: this document may have an updated version, please check our website.

Introduction

Futurewise staff has spent over two and a half years actively reviewing and participating in many Shoreline Master Programs. We have seen many different examples of how to do a Shoreline Master Program (SMP) and the documents needed to support it. While we have seen good examples, we have also seen many problems. More importantly we have seen patterns in how these problems come into being, and want to share them with those interested in developing good SMPs. We have boiled down and consolidated our observations into a series of guidance documents that discuss the requirements for developing Shoreline Master Programs (SMPs), the important consequences of those requirements, pitfalls we have observed that should be avoided, and our recommendations for implementing the many different requirements at the same time.

In the course of reviewing many Shoreline Master Programs (SMPs), Futurewise has observed a wide range of approaches for establishing shoreline environments. Some of these have good qualities making them worth considering by other jurisdictions. Others illustrate pitfalls that should be avoided. This paper describes why protective environments are important, and identifies the common problems and the recommended solutions.

Mitigation Sequencing Must Be Built Into the Structure of the SMP

Before describing the shoreline environment requirements, it is critical to understand the basic SMA policy and SMP Guidelines[1] requirements, which are summarized below.

The Shoreline Management Act (SMA) voter approved policy statement in RCW 90.58.020 lists a primary policy objective of the act [with emphasis]: "This policy contemplates protecting against adverse effects to the public health, ***the land and its vegetation and wildlife, and the waters of the state and their aquatic life***, while protecting generally public rights of navigation and corollary rights incidental thereto." Thus, while new development is allowed, it must protect natural functions and ecological features, and the public's interest in health and navigation. ***Note that*** not even water-dependent uses are listed as being equal to these items. Water dependent uses are discussed in detail in our guidance document dealing with use limits and preferences. This policy is echoed by the policy paragraph that provides particular protection for Shorelines of Statewide Significance, which establishes a list of preferences for both the long term protection of the public interest, and protecting the natural character and functions of these shorelines.

In addition, the SMA policy provides that "[p]ermitted uses in the shorelines of the state shall be designed and conducted in a manner to ***minimize***, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."

These two principles are implemented in the SMP Guidelines through requirements for no-net-loss of ecological function and mitigation sequencing. Regarding ***no-net-loss of ecological functions***, the Guidelines require that: "Local master programs shall include policies and regulations **designed** to achieve no net loss of those ecological functions."[2] Note that the requirement to "design" the SMP to accomplish no-

[1] Despite being called 'Guidelines,' the SMA, in RCW 90.58.080(1), requires that shoreline master programs shall be consistent with the SMP Guidelines.

[2] WAC 173-26-186(8)(b) under Governing Principles of the Guidelines relating to ecological functions; and implemented in WAC 173-26-201(2)(c) under Basic Concepts.

net-loss is restated in four other locations as well, for uses, modifications, and cumulative impacts.[3] The no-net-loss requirement is accomplished using the concept of ***mitigation sequencing***,[4] whereby the first task of mitigation is avoidance of impacts, the second task is minimization of impacts, and the third is compensation for remaining impacts. Stated another way, allowing development to impact the shoreline is supposed to be the last option, not the first option. WAC 173-26-221(5)(b) makes that clear, providing [with emphasis]: 'Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions."

Of critical importance in understanding mitigation sequencing is that the word "mitigation" does not mean replacement of lost functions - that is "compensation" which is the last option. Many people confuse the terms, which then implies that performing mitigation means jumping straight to compensation and replacement before using avoidance and minimization. But compensatory mitigation for damage done is not the same as "prevention of damage to the natural environment," which is an important distinction to qualify as a preferred use, as discussed in detail in our guidance document dealing with use limits and preferences.

"Designing" an SMP to accomplish the no-net-loss principle means "designing" the different components of the SMP using mitigation sequencing. The SMP Guidelines include requirements for several components that, if implemented correctly, accomplish mitigation sequencing at different levels within the SMP. These components include: designating environments, placing limits on uses and modifications, establishing buffers (or setbacks with vegetation management) based on science,[5] and developing regulations specific to different types of development. Each of these components is a subject of one of our Guidance Documents, each of which describes how to design mitigation sequencing into the element. Designing each component to avoid and minimize impacts, and then including specific standards for compensation of remaining impacts will result in an SMP that is structured to prevent the loss of ecological functions as much as possible.

There are two important points to keep in mind when preparing an SMP: (1) the rule of liberal construction, and (2) the requirement to rationally and carefully plan. When implementing and interpreting typical laws we use strict construction, but for shoreline law we use liberal construction (as required by RCW 90.58.900) "to give full effect to the objectives and purposes for which it was enacted." This means that when shoreline laws are interpreted, the correct outcome is the one providing more protection to shorelines rather than the one providing less protection. The legislative findings in the SMA policy statement (RCW 90.58.020) identifies the "clear and urgent demand for a ***planned, rational, and concerted effort*** … to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." This statement has clear repercussions, in developing an SMP because strategies that provide little detail and vague standards, or that do not address certain types of development are not undertaking a "planned, rational, and concerted effort". Rather, such an approach is planning by default, without careful consideration, and accomplishes the opposite of the SMA policy intent.

Pitfalls to Avoid: Don't rely on vague statements of protection, but rather design specific regulations for all types of development. Some jurisdictions have attempted to meet the no-net-loss of ecological function requirement by simply repeating the no-net-loss principle in the regulations for the different types of development. In turn, they typically include few other regulations, establish few use limits, and make few distinctions in mapped environments. Aside from not meeting many other requirements, such an approach makes it uncertain that impacts will even be identified, let

[3] (1) Governing Principles for protecting ecological functions in WAC 173-26-186(8)(b)(i),
(2) General principles for all modifications in WAC 173-26-231(2)(d),
(3) General principles for all uses in WAC 173-26-241(2)(a)(iv),
(4) Cumulative Impacts Analysis requirement in WAC 173-26-201(3)(d)(iii).

[4] WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions; and implemented in WAC 173-26-201(2)(e) under Basic Concepts, Environmental Impact Mitigation.

[5] WAC 173-26-221(5)(b).

alone mitigated at the project stage. Such uncertainty cannot be accounted for in the Cumulative Impact Analysis (CIA). This is not the intent of the SMP Guidelines, nor the SMA's legislative intent to plan carefully. The SMP and its array of policies and regulations ***are themselves to be designed*** to accomplish no-net-loss of ecological functions, not simply to restate the principle over and over.

Mitigation Sequencing Using Environment Designations

Since the entire SMP must be designed to accomplish no-net-loss of ecological functions, this includes the shoreline environments. Shoreline environments are one of the basic components of the SMP that control the corresponding use and modification limits within those environments. This makes establishing environments a fundamental step in building mitigation sequencing into the SMP, because protecting the higher functioning areas with protective environments helps ***accomplish the first step in mitigation sequencing – avoidance.***

Most jurisdictions have extensive areas of developed shorelines, so it is critical to protect the remaining areas with high levels of ecological function. Protecting them requires identifying them in the inventory and establishing Natural and Conservancy (or equivalent) environments that protect the remaining high functioning areas. This must be followed up in the use limits by not allowing certain uses and modifications, and by limiting development intensity as described in the SMP Guidelines. These areas should exclude intensely developed areas (such as residential development at urban densities), but should include low density residential development (with separation between homes, perhaps even with intact vegetation) typically found in rural areas.

The SMP Guidelines WAC 173-26-201(3)(d) - Preferred uses – requires the protection of intact areas, and changes to the Guidelines in 2011 emphasized intact areas both on land and in the water.

> (i) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits.

WAC 173-26-211 provides the requirements for establishing shoreline environments. WAC 173-26-211(2)(a) establishes the basic requirements for shoreline environments, and states [with added emphasis]:

> "Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system ***shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.***"

But establishing such a system requires accurate information about the condition of the shoreline. Changes were made to the SMP Guidelines inventory requirements (WAC 173-26-201(3)(c)) in 2011, and it currently includes many specific items needed to identify blocks of intact shoreline area, highly functioning aquatic areas, and intact shoreline vegetation, as listed below. It addition, it requires inventorying the extent of alterations, such as structures and other modifications, which are important in identifying the degradation of developed locations.

> (i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, vegetation and shoreline modifications in shoreline jurisdiction. Special attention should be paid to identification of ecologically intact blocks

of upland vegetation, developed areas with largely intact riparian vegetation, water-oriented uses and related navigation, transportation and utility facilities.

(ii) Existing aquatic and terrestrial wildlife habitats; native aquatic vegetation; riparian and associated upland plant communities; and critical areas, including wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, ...

(iii) Altered and degraded areas and sites with potential for ecological restoration.

(iv) Areas of special interest, such as priority habitats, ecologically intact late successional native plant communities, ...

...

(vii) General location of channel migration zones, and flood plains.

...

(xi) Information specific to the aquatic environment for siting in-water uses and development, such as sediment contamination, intertidal property ownership, aquaculture operations, shellfish beds, shellfish protection districts, and areas that meet department of health shellfish water quality certification requirements.

WAC 173-26-211(4)(b) provides the recommended environment system, and states:

> "The recommended classification system consists of six basic environments: "High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic" as described in this section and WAC 173-26-211(5)."

WAC 173-26-211(4)(c)(i) provides for using alternative systems, and states [with emphasis]:

> "Local governments may establish a different designation system or may retain their current environment designations, ***provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5)***" [Note: Subsection (5) describes the specific recommended environments.]

Thus jurisdictions have the discretion of establishing customized environments. But the environments chosen need to meet the general intent laid out in the SMP Guidelines:

- protect the higher functioning shoreline areas,
- provide places for residential and other preferred shoreline development, and
- provide places for higher intensity development where the development will avoid impacting shoreline resources, such as public enjoyment and ecological function.

WAC 173-26-211(4)(a) requires that the policies for each environment include its (1) Purpose, (2) Classification Criteria, and (3) Management Policies. Using the model of the recommended environments, the Management Policies should include what is allowed or not allowed in the environment. Describing allowed uses is critically important in helping decision makers and citizen committees understand the land use outcomes of mapping decisions.

To summarize the above requirements, protecting ecologically intact areas using protective shoreline environments is an important first step in building mitigation sequencing into the SMP. These environments need to be consistent with the SMP Guidelines for those environments. If a custom environment is to be used, it needs to implement the intent of the Guidelines environment that it is similar to. Whichever path is chosen, the ecologically intact areas need to be protected using the intent of the Natural and Conservancy environments.

Consistency with the SMP Guidelines environment provisions is important because there are specific requirements for these protective environments – particularly in the intent statements and the management policies. The Guidelines[6] for the Natural and (to a lesser extent) Conservancy environments indicate that uses

[6] WAC 173-26-211(5); Natural is paragraph (a), Rural Conservancy is (b), Urban Conservancy is (e).

within them are to be low-intensity and avoid degrading the shorelines. Similar alternative environments (for example Forestry or Resource) would still have to be similar to these requirements. This means that a distinction must be included in the use limits and development standards that differentiate uses based on intensity. Broad categories of uses cannot be allowed in these environments without these limits. If a category of use (commercial, industrial, residential, etc.) is to be allowed in a protective environment, the low intensity elements of them need to be distinguished, and the use limits (such as entries in a use table) need to use that low-intensity distinction so that higher intensity uses are not allowed. For example, multifamily residential and urban density residential subdivision are higher intensity uses that are inherently too intense for the Natural and Conservancy environments. Residential subdivisions in the Natural and Conservancy environments should include density and spacing requirements to ensure that they are low intensity. Some Natural environments we have reviewed even prohibit residences.

If an SMP allows for the conversion of functioning shorelines to higher intensity uses (whether by planned intent, or by the omission of protective regulations), there will be a loss of ecological functions that site-specific project mitigation almost certainly cannot mitigate due to elimination of wildlife habitat, and increased disturbances that drive off wildlife, loss of vegetation both inside and outside the buffer, increases in impervious surface, etc. This means that the jurisdiction must replace these lost functions at its own expense. This greatly complicates the Restoration Planning and Cumulative Impacts Analysis for the jurisdiction, making it extremely difficult to demonstrate that lost ecological functions will be replaced in some manner and making it practically impossible to achieve no net loss of shoreline functions.

Pitfalls to Avoid: Don't designate intact areas with development based environments – use Natural and Conservancy. Designating shoreline areas that have intact functions with environments (such as Shoreline Residential or Urban) that allow intense development (such as residential subdivisions at urban densities, commercial uses, or active use public parks) "plans for" the ecologically intact areas to be converted to human use areas. This will result in a loss of shoreline functions. In such cases, the jurisdiction must be clear in how these lost ecological functions will be replaced in the Cumulative Impact Analysis and Restoration Plan.

Pitfalls to Avoid: Don't "balance" away shoreline policy to accommodate development. WAC 173-26-186(9) reads [with added emphasis]: "To the extent consistent with the policy and use preference of 90.58.020, this chapter (WAC 173-26), and these principles, local governments have reasonable discretion to balance the various policy goals of this chapter…" This is similar to the implementation statement in the SMA policy, in which preferences and priorities are established, but only in the implementation of the policy itself. (See our guidance document regarding use limits and preferences for a detailed discussion.) However, some jurisdictions have used the "balancing" phrase by itself as an excuse to designate intact areas with environments that allow intensive development (often for residences or water-dependent uses) that will convert those areas to human uses. Yet they do not acknowledge the inherent impacts, nor require specific compensation for the losses, nor account for the losses in their Cumulative Impacts Analysis. Such a use of the "balancing" clause selectively ignores the requirement to be consistent with the policy to protect ecological functions. The facilities they desire may be allowable, but they must still protect shoreline ecology to the extent feasible, and provide compensation for impacts to functions.

Pitfalls to Avoid: Don't allow uses in the remaining intact areas that allow converting them to human uses. Another problem is that jurisdictions may designate intact and functioning areas with appropriate environments, but then allow intensive uses in those environments that will result in the conversion of the intact areas. Such an SMP environment does not comply with the SMP Guideline management policies for the environment. An example is a Conservancy environment that allows urban density subdivisions, large scale commercial uses, or intense public recreation uses – all of which will displace the intact areas. An extreme version of this is where environments are established and mapped, but there is little or no distinction in the uses allowed in the different environments; and in a worst case scenario, all uses are allowed in all environments in an attempt to just rely on zoning

regulations that do not consider shoreline requirements. These strategies plan by default rather than by careful consideration, as required by the SMA. Our guidance document dealing with use limits and preferences provides more detail.

Pitfalls to Avoid: Don't avoid distinctions in use intensity. Another common problem is that many jurisdictions do not distinguish between high-intensity and low-intensity developments in their use limits for the protective environments. For example, a county might allow all scales and intensities of commercial uses equally in the Rural Conservancy environment. Thus, (assuming water-dependency criteria are met) it might allow a mall as readily as allowing a small rural service establishment – which have great differences in their effects. For an urban example, a city might allow all recreation uses equally in the Urban Conservancy environment. Thus a sports complex gets treated the same as low intensity walking trail. Making a distinction in the use category for high-intensity and low-intensity uses would allow the jurisdiction to permit limited uses in the protective environments. Again, leaving out use-intensity does not comply with the SMP Guidelines management policies for the protective environments.

Pitfalls to Avoid: Don't avoid including use limits because they are "unlikely." Some jurisdictions have attempted to allow a broad range of uses in their protective environments by claiming that while the SMP may allow the development, such proposals are unlikely to happen, and thus don't need to be considered in the Cumulative Impacts Analysis. Such an approach contradicts the very intent of the Cumulative Impacts Analysis by avoiding consideration of the accumulation of impacts over longer periods of time, which is one reason our shorelines are as degraded as they are. The problem is that the conditions that make the development "unlikely" may change, making it more likely. Describing something as "unlikely" is another way of saying it's allowed but there is a small percentage chance of it happening. Thus "unlikely" development is still estimable. Our guidance document dealing with No-Net-Loss and cumulative impacts provides additional details on this issue.

Protect High Quality Aquatic Areas With Appropriate Environments

The SMP Guidelines recommend a land-water environment system; where the water is placed in the Aquatic environment and the uplands are placed in a variety of other environments. This system creates three problems that need to be addressed.

High Functioning Water Areas - As already described, the Shoreline Management Act and the Shoreline Master Program Guidelines require[7] protecting the most ecologically intact and highly function areas, including highly functioning aquatic areas. The inventory requirements, described above, include inventorying highly functioning aquatic areas. However, while the Guidelines have developed an approach to identifying the most natural and ecologically intact areas for upland situations, there is not a recommended water environment that can similarly protect the in-water areas with the highest ecological functions. Thus the entire area of actual shoreline water body that is to be protected is treated the same regardless of whether it's ecologically of high quality or low quality.

Incompatibilities - The second problem is that if the Aquatic environment covers all water areas, there is a tendency to allow a broad range of uses within it. Thus all those uses are allowed immediately adjacent to the upland environments, which will result in compatibility problems – especially where adjacent to Natural and Residential environments.

Permitting Complexity - Many in-water uses also have upland components. Consequently, any project with a water component will usually have two environments that they must be compatible with. This characteristic of the system makes it very easy for a project to be allowed in the Aquatic environment, but not allowed in

[7] WAC 173-26-186(8) – describing the framework for protecting ecological functions. Also see our guidance document dealing with no-net-loss of ecological functions.

the upland environment - and maybe vise versa. This contradiction can create gaps and loopholes that can result in bad shoreline development or unintended consequences.

While the SMP Guidelines recommend designating all water areas as an Aquatic environment, alternative approaches are allowed that can address these problems. In our review of different SMP environment systems, we have observed several approaches to dealing with water areas, some specific to the type of water body. Sometimes multiple approaches are used by a jurisdiction. The range of possibilities includes:

- Designate all water areas as Aquatic
- Designate water areas using multiple aquatic environments.
- Designate all water areas the same as the adjacent upland environment (works for rivers, but has complications with enclosed lakes and marine waters regarding matching the opposite shore environment, and sharply curving shores)
- Designate the entire lake and its shorelands as a single, non-aquatic environment.
- Designate both river water areas and the immediately adjacent shorelands with a larger parallel environment, such as using the FEMA Floodway or CMZ.
- Designate deep water areas (lake or marine) with a different water environment.

These different approaches generally result from the basic choice of whether to include the shallow water areas adjacent to land within the upland environment, or to have the water area be completely separate from the adjacent upland environments. Both have benefits and problems that are summarized below.

<u>Using Separate Aquatic Environment</u>

Benefit 1: The regulations related to in-water development can be focused on the Aquatic environments - although this requires a separate regulation section for the Aquatic environment or a similar approach. Some jurisdictions using the Aquatic environment don't focus requirements and don't gain this benefit.

Benefit 2: A deep-water version of the Aquatic can be established to deal with deep water areas, which are rarely used in conjunction with upland areas. They can then be treated differently from upland areas and shallow waters. This option can actually be used with both a regular Aquatic environment, and with including shallow water areas with the adjacent upland environment, as described below.

Problem 1: The entire area of water in the jurisdiction is treated the same regardless of whether it's ecologically of high quality or low quality. <u>Solution</u>: Use the inventory to identify high quality in-water areas, and provide different shoreline environment, such as Aquatic Natural. Examples: Jefferson County has the best example (Priority Aquatic); Mukilteo also uses two aquatic environments; King County uses the Maury Island Aquatic Reserve as a non-environment designation, though it is cumbersome. A less effective alternative would be to place a requirement in the use limits that development in the Aquatic environment must also meet the use limits for the adjacent upland environment. This would use the adjacent upland environment (mainly Natural or Conservancy) as an imperfect proxy for in-water ecologic function.

Problem 2: The entire area of water in the jurisdiction is treated the same regardless of whether it's adjacent to natural areas or residential areas. This easily results in incompatibilities with those environments. Solution: Like in Problem 1, place a requirement in the use limits that development in the Aquatic environment must also meet the use limits for the adjacent upland environment.

Problem 3: Almost all shallow water development connects to the adjacent upland which will be in a different environment. This complicates permit review due to different use limits, regulations, and permit processes. Solution: None - upland components must meet upland rules and in-water components must meet Aquatic requirements.

Including Water Areas Within Adjacent Upland Environment

Benefit 1: Can treat in-water development and related upland development as a whole with the same set of environment rules.

Benefit 2: Development allowed in water areas and their adjacent uplands will have fewer conflicts.

Benefit 3: Upland environments can serve as an imperfect proxy for ecological quality of adjacent in-water areas. Inventory of in-water areas can be used to better refine the environment maps.

Problem 1: In-water requirements can't be focused on just the Aquatic environment. Solution: Incorporate in-water requirements into general standards; or if not feasible, then into requirements for different types of development. Some jurisdictions that actually do use the Aquatic environment handle in-water requirements in this manner anyway.

Problem 2: Use of deep water areas is rarely related to upland areas and thus don't fit well into upland environments. Solution: Can designate deep water separately if needed. Don't necessarily need to for rivers and some lakes.

Recommendations:

We recommend that jurisdictions always inventory their water areas carefully and identify those with high levels of ecological function. Otherwise a proxy is needed to protect these ecologically higher functioning areas.

(1) If the jurisdiction does inventory their high quality water areas, these areas need a separate environment or other identification to limit uses within them and protect their ecological functions.

(2) If the jurisdiction does not inventory and identify their high quality water areas, we recommend at a minimum one of two options: (1) that adjacent upland environments be extended to shallow water areas, or (2) that a regulation be included in the use limits to require development in the Aquatic environment to also meet the requirements of the adjacent upland environment. Either option will allow the ecologically protective environments to serve as a proxy for high quality in-water areas, and also avoid in-water development that is incompatible with adjacent uplands.

Jurisdiction Issues

The SMA requires that all cities and counties plan for all shorelines within their jurisdiction. Sometimes SMPs do not clearly identify shorelines environments for all of the shorelines within their jurisidiciton. We have observed two main reasons for this: (1) the jurisdiction doesn't realize the extent of their jurisdiction, or (2) the jurisdiction assumes that local governments cannot regulate some areas. Below are the general rules to consider in correctly identifying the shoreline jurisdiction and mapping shoreline environments.

Water Bodies

Shoreline water bodies can extend great distances over lakes and marine areas. County and city boundaries often extend to a defined boundary lying out in a water body – the centerline of a river, the middle of the lake, a line in the Puget Sound or the ocean, etc. The jurisdiction must know where the jurisdiction lines lie and must plan for shorelines within those boundaries. This is something that should be ***actively*** determined and confirmed - especially for cities where maps may not accurately show jurisdiction over water areas. In many cases state law extends a city's jurisdiction to the middle of the water body, even if only upland areas have been annexed. Once all the shoreline water areas within the jurisdiction are identified, they must also be designated with a suitable environment.

Pitfalls to Avoid: Don't avoid designating and mapping water areas with environments. Some jurisdictions believe that they do not have authority over water areas beyond the harbor line, line of navigability, or other line, because there are federal or state agencies that regulate those areas. This is not the case. Different agencies administer different laws, and all the laws apply and must be followed. Shoreline law regulates "development" within shoreline jurisdiction.

Some jurisdictions have not mapped all their water areas. The result is shoreline waters with no environment mapped and no use limits based on environments, and sometimes no permit process defined for development in those areas. All areas within shoreline jurisdiction must be provided with an environment.

Federal and Tribal Lands

Shoreline jurisdiction on federal land is not determined based on geographic boundaries, but rather on federal activity. The Coastal Zone Management Act requires federal compliance with state Coastal Zone Management Plans. Washington's plan includes the state's local SMPs. Federal agencies must consult with the state regarding impacts to the state CZMP, and non-federal actions on federal land must obtain permits under the local SMP. The shoreline environment mapping needs to be extended into the federal lands so that non-federal activities (leases, inholdings, cabins, etc.) will be able to be reviewed appropriately.

While the specifics of how state and local laws apply within tribal reservations may vary from situation to situation, a general rule is that lands owned by non-tribal members are subject to the SMP. We recommend consulting with the affected tribal authorities on how to map shoreline jurisdiction within reservations. Where lands may change hands between tribal and non-tribal members, and thus may change in being subject to shoreline law, it may be appropriate to assign shoreline environments so that there is a way to handle shoreline review appropriately.

> **Pitfalls to Avoid: Don't avoid assigning environments simply because of boundary lines.** Jurisdictions often stop their shoreline mapping at the federal land ownership line or tribal reservation boundary. Historically, many counties did the same thing, which left non-federal actions and non-tribally owned reservation lands having undefined shoreline environment regulations and permit processes. Thus implementation of the SMP was left unclear when it should have been made clear.

Include Adequate Maps in the SMP

Maps are a critical component to shoreline planning for a number of reasons: (1) understanding the condition of the shoreline in the inventory, (2) guiding the development of new environments and regulations, and (3) giving local citizens and developers an accurate understanding of where shoreline requirements apply to guide future development. Furthermore, they are required by the SMA and SMP Guidelines. The SMA in RCW 90.58.100(1) is explicit about using currently available technology in shoreline planning: "... In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible: ... (f) Employ, when feasible, **all appropriate modern scientific data processing and computer techniques** to store, index, analyze, and manage the information gathered."

The SMP Guidelines also state the need to develop accurate maps that establish environments over the known shoreline jurisdiction. In addition, since a map is only a representation of on-the-ground conditions, the WAC also requires text to guide identification of boundaries edges/changes. WAC 173-26-211(2)(b) states [with added emphasis]:

> "An **up-to-date and accurate map** of the shoreline area delineating the environment designations **and their boundaries** shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program **text shall include a clear basis for identifying the boundaries**, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map."

Modern computer mapping capabilities make the depiction of shoreline jurisdiction and environments relatively easy and accurate. *The following sections include some mapping recommendations.*

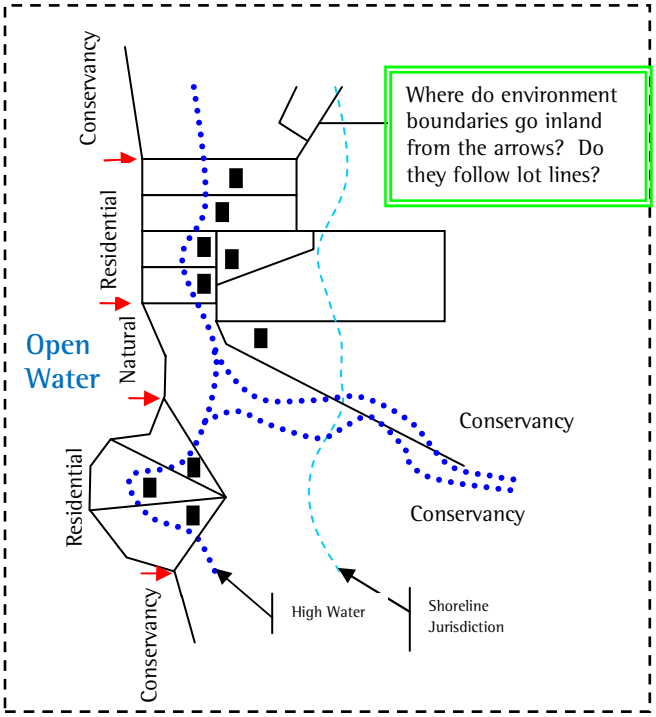
Shoreline Inventory Must Map All Existing Data Pertinent to Shorelines

The above SMP Guideline requirements are clear about the need for maps. WAC 173-29-201(3)(c) also is clear that during the inventory the jurisdiction must: "Gather and incorporate all pertinent and available information, existing inventory data and materials ... Map inventory information at an appropriate scale. ... Collection of additional inventory information is encouraged ..." Many important pieces of shoreline condition data is found in air photos - both current and historic. The most explicit example would be simply using an air photo map and marking and measuring in-water and near-water structures, existing vegetation areas, etc. A slightly more analytical example is using historic air photos, historic maps, and topography maps/data to identify the outer boundary of a river's channel migration zone. Such data needs to be included in the inventory, analyzed, and mapped.

> Pitfalls to Avoid: Don't avoid mapping data from the air photo maps. Some jurisdictions use the part of the above provision that says they don't have to develop new data as an excuse to avoid fully analyzing the existing data for their shorelines. Their reasoning is that the provision means they don't have to create new maps of the relevant data. The result is an inventory with very few maps showing the characteristics of the shoreline. Even when air photos are used, some jurisdictions still refuse to generate maps of the relevant data – they only assess the data using a whole-jurisdiction overview, not for inventorying the condition of specific shoreline areas. However, this mindset ignores the requirements that they have to actually analyze the existing data to extract the relevant information it provides. The Guidelines require that existing data must be used, and "computer techniques to store, index, analyze, and manage" that data must be applied.

Jurisdiction And Environment Maps Must Use Polygons Rather Than Lines

A critical distinction needs to be made between the old style of shoreline mapping, using lines along the shore, and current mapping technology, which uses polygons. Line-based environment designation maps suffer from two critical flaws. First, they don't capture the broad areas that shoreline jurisdiction can cover, such as open water areas (especially lake surfaces), floodplains, and associated wetland complexes, all of which may be much wider than a line-based map can depict. Property that is in these areas appears to landowners and untrained staff persons to be outside shoreline jurisdiction, and may mislead them in their decisions. And even when correctly identified, these properties must have their environment designation interpreted. Second, since line-based environments end in points, they cannot accurately define the boundary lines where shoreline environments meet and change. Whether a development is in one environment or another makes a dramatic difference to the project proponent, since it determines what uses are allowed or not allowed. Accurately describing the basis of boundary changes and depicting them on the map are very important – especially in settling disputes about which environment a project is located in. The graphic to the left illustrates some of the difficulty in complex property line situations.



Even polygon-based maps must be careful in how they depict boundary lines between environments. Since a map is only a representation of on-the-ground conditions, they must be based on a consistent set of rules

that are described in the SMP text. The importance of these rules becomes very apparent when extending the boundary line between environments across broad areas of open-water or floodplain. A small change in angle can propagate dramatically as the line is extended across a distance, especially a floodplain where development has a higher likelihood to occur. Thus every boundary needs to be based on a common method that is described in the SMP – whether using road centerlines, section lines, parcel lines, river centerlines, lines perpendicular to the water-line, etc. These kinds of guidance provisions are common in zoning ordinances to guide the use of zoning maps, and they should be included in the SMP.

A common situation unique to rivers is having different environment designations on either side of the river. Since rivers and streams migrate, and the location of the centerline changes overtime. Rivers can also avulse – dramatically changing locations in the floodplain. Thus a development fronting on the river can find that the river has avulsed behind it, and then it is subject to different SMP regulations based on a different environment. Such possibilities need to be considered, and the means of demarcating the boundary line between different environments on either side of the river needs to be included. It may be that an Aquatic environment is used, or that the upland environments extend to the centerline or thalweg of the river. At a minimum, the SMP text needs to provide a guidance statement for river situations.

> **Pitfalls to Avoid: Don't use line-based maps – use polygons.** Developing SMP maps using old technology and methods is contrary to the SMP Guidelines. Geographic Information System (GIS) mapping technology, the data layers to use with them, and the expertise to develop map products are readily available at a reasonable cost. Smaller jurisdictions without GIS capability can work cooperatively with county or regional planning organization. So accurately maps need to be included with the SMP.
>
> **Pitfalls to Avoid: Don't avoid defining the boundaries between environments.** Some may argue that a line is adequate. However, even for SMPs without complex shoreline designations, line designations don't indicate how the boundaries lines between environments are extended through complex property line situations, or what other basis for a line is used. Line-based mapping also typically lacks the text to provide on-the-ground guidance. When undertaking the effort of using polygon areas, one quickly realizes establishing boundaries between environments is not simple, because parcel lines intersect with shorelines at odd angles.
>
> **Pitfalls to Avoid: Don't avoid text guidance for how boundaries between environments were set.** Some jurisdictions may actually have polygon maps, but the SMP text does not indicate the rules to guide the boundary lines on the ground. A map is only an approximation of the actual situation, and text rules are needed in the SMP to guide its application. Whatever features were used to draw the boundary lines should be apparent on the map, and if lines appear to be based on parcels, or physical features (such as centerlines of roads rights-of-way, rivers, etc.), or section lines the text should say so.

Environments for New Shorelines and Shoreline Wetlands

Shoreline planners regularly encounter the problem of discovering a new shoreline. This can happen for several reasons:

- A new shoreline is created by mining or similar excavation,
- A dam creates a new reservoir that qualifies for shoreline jurisdiction
- A lake or river meeting shoreline criteria is learned about
- Inaccurate information on a river or lake is corrected, and now it meets shoreline criteria
- Associated wetlands are learned about that may be some distance from the water body.

The SMP Guidelines require[8] default contingencies to deal with these cases. The simplest is to say that a shoreline area that does not have an environment designation shall be assigned a specific protective

[8] WAC 173-26-211(2)(e).

environment, usually the Urban or Rural Conservancy designation, until it is assigned a different environment in the next SMP update.

Wetlands are a situation that needs special attention, even if they are known. Of course, if they are already known, they should be assigned a shoreline environment. But associated wetlands that are newly discovered, or are newly found to be associated with a shoreline need special default contingencies. The most common situation is where wetlands lie outside a floodplain. Where the floodplain is cut off or isolated due to diking, the wetlands are typically still hydologically associated with the river through the groundwater patterns driven by the river levels, especially during spring high water. However other situations may also exist for lake and marine shorelines. There needs to be a statement that such associated wetlands have a shoreline environment that is the same as the nearest adjacent shoreline segment or a protective default designation such as the urban or rural conservancy designation.

> **Pitfalls to Avoid: Don't avoid text guidance for handling unidentified shorelines.** Some jurisdictions do not have this basic requirement, but even those that do often don't provide direction for the different possibilities that may result in new jurisdiction areas that were not know previously. For example, newly discovered shorelines in remote areas might need to be treated differently than human created ones, both of which might need to be treated differently from associated wetlands.

Recommendations on

Shoreline Buffer Options That Work with Buffer Science

May 2011

Contact: Dean Patterson - dean@futurewise.org. Phone: 206-343-0681. Web: www.futurewise.org.

Note: this document may have an updated version, please check our website.

Introduction

Futurewise staff has spent over two and a half years actively reviewing and participating in many Shoreline Master Programs. We have seen many different examples of how to do a Shoreline Master Program (SMP) and the documents needed to support it. While we have seen good examples, we have also seen many problems. More importantly we have seen patterns in how these problems come into being, and want to share them with those interested in developing good SMPs. We have boiled down and consolidated our observations into a series of guidance documents that discuss the requirements for developing Shoreline Master Programs (SMPs), the important consequences of those requirements, pitfalls we have observed that should be avoided, and our recommendations for implementing the many different requirements at the same time.

As one of the primary sources of ecological functions, buffers are needed to achieve the Shoreline Management Act's policy "protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life."[1] Futurewise strongly recommends using the buffers required by the *Endangered Species Act Section 7 Consultation Final Biological Opinion for Implementation of the National Flood Insurance Program in the State of Washington, Phase One Document – Puget Sound Region.* These buffers are based on a careful analysis of the impacts of development on shorelines and the available science. Using these buffers will both comply with the Shorelines Management Act requirements for no-net-loss of shoreline functions and maintain eligibility for the Federal Flood Insurance Program. Furthermore, science-based buffers can be logically used for both developed and intact areas, as described in our recommendations at the end of this document.

In the course of reviewing Shoreline Master Programs (SMPs), Futurewise has seen many buffer systems that use small buffers in areas of existing development. While some are logically sound and work well, many of these systems seem to be based on assumptions that avoid accurately identifying impacts of development. For example, one assumption is that if a small buffer is established based on existing development patterns, then unlimited new development (including redevelopment, expansion, and more intensified uses) outside that small buffer will have no additional impacts to shoreline ecological functions, and thus no mitigation is necessary. These assumptions are also discussed in detail in our guidance document dealing with no-net-loss of ecological functions. This guidance document shows that there is no logical scientific basis for buffer systems that use such assumptions. While we also identify some ways to use small buffers in existing intensely developed areas, those systems may not achieve compliance with the requirements for the National Flood Insurance Program and will not protect fish and wildlife as well as the buffers in the biological opinion.

Mitigation Sequencing Must Be Built Into the Structure of the SMP

Before describing the buffer requirements, it is critical to understand the basic SMA policy and SMP Guidelines requirements, which are summarized below.
The Shoreline Management Act (SMA) voter approved policy statement in RCW 90.58.020 lists a primary policy objective of the act [with emphasis]: "This policy contemplates protecting against adverse effects to the public health, *the land and its vegetation and wildlife, and the waters of the state and their aquatic life*, while protecting generally public rights of navigation and corollary rights incidental thereto." Thus, while new development is allowed, it must protect natural functions and ecological features, and the public's interest in health and navigation. *Note that* not even water-dependent uses are listed as being equal to these items. Water

[1] RCW 98.58.020.

dependent uses are discussed in detail in our guidance document dealing with use limits and preferences. This policy is echoed by the policy paragraph that provides particular protection for Shorelines of Statewide Significance, which establishes a list of preferences for both the long term protection of the public interest, and protecting the natural character and functions of these shorelines.

In addition, the SMA policy provides that "[p]ermitted uses in the shorelines of the state shall be designed and conducted in a manner to *minimize*, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."

These two principles are implemented in the SMP Guidelines[2] through requirements for no-net-loss of ecological function and mitigation sequencing. Regarding ***no-net-loss of ecological functions***, the Guidelines require that: "Local master programs shall include policies and regulations **designed** to achieve no net loss of those ecological functions."[3] Note that the requirement to "design" the SMP to accomplish no-net-loss is restated in four other locations as well, for uses, modifications, and cumulative impacts.[4] The no-net-loss requirement is accomplished using the concept of ***mitigation sequencing***,[5] whereby the first task of mitigation is avoidance of impacts, the second task is minimization of impacts, and the third is compensation for remaining impacts. Stated another way, allowing development to impact the shoreline is supposed to be the last option, not the first option. WAC 173-26-221(5)(b) makes that clear, providing [with emphasis]: 'Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions."

Of critical importance in understanding mitigation sequencing is that the word "mitigation" does not mean replacement of lost functions - that is "compensation" which is the last option. Many people confuse the terms, which then implies that performing mitigation means jumping straight to compensation and replacement before using avoidance and minimization. But compensatory mitigation for damage done is not the same as "prevention of damage to the natural environment," which is an important distinction to qualify as a preferred use, as discussed in detail in our guidance document dealing with use limits and preferences.

"Designing" an SMP to accomplish the no-net-loss principle means "designing" the different components of the SMP using mitigation sequencing. The SMP Guidelines include requirements for several components that, if implemented correctly, accomplish mitigation sequencing at different levels within the SMP. These components include: designating environments, placing limits on uses and modifications, establishing buffers (or setbacks with vegetation management) based on science,[6] and developing regulations specific to different types of development. Each of these components is a subject of one of our Guidance Documents, each of which describes how to design mitigation sequencing into the element. Designing each component to avoid and minimize impacts, and then including specific standards for compensation of remaining impacts will result in an SMP that is structured to prevent the loss of ecological functions as much as possible.

There are two important points to keep in mind when preparing an SMP: (1) the rule of liberal construction, and (2) the requirement to rationally and carefully plan. When implementing and interpreting typical laws we use strict construction, but for shoreline law we use liberal construction (as required by RCW 90.58.900) "to give full

---

[2] Despite being called 'Guidelines,' the SMA, in RCW 90.58.080(1), requires that shoreline master programs shall be consistent with the SMP Guidelines.

[3] WAC 173-26-186(8)(b) under Governing Principles of the Guidelines relating to ecological functions; and implemented in WAC 173-26-201(2)(c) under Basic Concepts.

[4] (1) Governing Principles for protecting ecological functions in WAC 173-26-186(8)(b)(i),
(2) General principles for all modifications in WAC 173-26-231(2)(d),
(3) General principles for all uses in WAC 173-26-241(2)(a)(iv),
(4) Cumulative Impacts Analysis requirement in WAC 173-26-201(3)(d)(iii).

[5] WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions; and implemented in WAC 173-26-201(2)(e) under Basic Concepts, Environmental Impact Mitigation.

[6] WAC 173-26-221(5)(b).

effect to the objectives and purposes for which it was enacted." This means that when shoreline laws are interpreted, the correct outcome is the one providing more protection to shorelines rather than the one providing less protection. The legislative findings in the SMA policy statement (RCW 90.58.020) identifies the "clear and urgent demand for a ***planned, rational, and concerted effort*** … to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." This statement has clear repercussions, in developing an SMP because strategies that provide little detail and vague standards, or that do not address certain types of development are not undertaking a "planned, rational, and concerted effort". Rather, such an approach is planning by default, without careful consideration, and accomplishes the opposite of the SMA policy intent.

Pitfalls to Avoid: Don't rely on vague statements of protection, but rather design specific regulations for all types of development. Some jurisdictions have attempted to meet the no-net-loss of ecological function requirement by simply repeating the no-net-loss principle in the regulations for the different types of development. In turn, they typically include few other regulations, establish few use limits, and make few distinctions in mapped environments. Aside from not meeting many other requirements, such an approach makes it uncertain that impacts will even be identified, let alone mitigated at the project stage. Such uncertainty cannot be accounted for in the Cumulative Impact Analysis (CIA). This is not the intent of the SMP Guidelines, nor the SMA's legislative intent to plan carefully. The SMP and its array of policies and regulations ***are themselves to be designed*** to accomplish no-net-loss of ecological functions, not simply to restate the principle over and over.

Mitigation Sequencing Using Buffers

Since the entire SMP must be designed to accomplish no-net-loss of ecological functions, this includes the shoreline buffers. As our guidance document dealing with shoreline environments describes, a critical step in mitigation sequencing is to identify and protect the segments of shoreline that have high levels of ecological functions using Natural and Conservancy environments. A similarly important step is identifying shorelines with intact vegetative buffers, and establishing a buffer system to protect both them and the remaining ecological functions of developed areas. Thus, it is critical that the inventory include characterization of the setback and vegetation conditions of the developed shorelines.

Establishing an appropriate buffer system that protects the ecological functions of shoreline vegetation is a fundamental step in building mitigation sequencing into the SMP, because protective buffers are one of the first steps to avoid and minimize damage from development. The system must also account for degradation caused by exceptions to meeting buffers, and methods of buffer reduction.

Use the SMA water-dependency preference in the buffer system. The SMA requires[7] that in the course of implementing the SMA policy, two very important preferences must be used:

(1) A preference for uses that control pollution and prevent damage to the environment. The SMA and SMP Guideline requirements for protecting ecological functions are summarized above and discussed in more detail in our guidance document on the subject (including cumulative impacts). Of course protecting ecological functions is the primary purpose of buffers.
(2) A preference of water-dependency for uses that need to be in or near the water. Water-dependency is discussed in detail in our guidance document dealing with use limits and preferences, and is also a critical part of implementing a buffer system. Water-oriented uses consist of water-dependent, water-related, and water-enjoyment uses. All other uses are considered non-water-oriented.

These two preferences incorporate the understanding that uses needing to be in or near the water are preferred but inherently can damage the environment. Of course, like all development, the SMA and SMP Guidelines require that they must minimize the damage and compensate for their impacts. Conversely, uses that don't need to be in or near the water must avoid damage to the environment to be considered preferred uses. Otherwise they are non-preferred, because the damage they cause to shoreline resources is the opposite of the SMA Policy.

[7] RCW 90.58.020 – paragraph four.

The SMP Guidelines specifically state that such uses must be prohibited or carefully controlled with special conditions.[8] They cannot be treated the same as preferred uses are treated; otherwise there is no effect to the preference.

Since the majority of ecological functions come from native intact vegetation, degrading that vegetation (including further degrading already degraded buffers) causes damage to the environment. Similarly, meeting a buffer width or setback (even if of a science-based width) but having no intact vegetation cannot mitigate the impacts of the development. Uses and development that have an intact science-based buffer go far in preventing damage. But if the buffer is not applied, the development will harm the environment - so there must be a good reason to allow it. This is why the SMA establishes preferences, such as water-dependency, and establishes the Shoreline Variance and Conditional Use Permit processes – they ensure there is a hardship or other good reason for not meeting a buffer (or other regulation). And of course, like all development, the SMA and SMP Guidelines require that the impacts be compensated for. Preferences are discussed in detail in our guidance document dealing with use limits and preferences.

This makes water-dependency criteria a critical factor in making buffers apply in a manner that accomplishes mitigation sequencing. If a development has no need to be near the water, it should be outside the buffer. A jurisdiction cannot just allow whatever uses and modifications it wishes in the buffer, because they typically cause harm to the environment. Such development must be treated differently by the review system. In using water-dependency in the buffer system, water-dependent and water-related uses need to be in the buffer and are preferred. In addition, uses that provide access to or across the water, and some (but not all) types of public recreation would be considered water-dependent or water-related. But water-enjoyment and non-water-oriented uses can meet the buffer and maintain their function, such as visual enjoyment of the water. They must prevent harm to the environment, and the primary means of doing this is to meet the buffer.

The SMP Guidelines' requirement for vegetation management standard in WAC 173-26-221(5)(c)(i) is provided below. The requirement is general and broad, and references WAC 173-26-221(5)(b), which is also discussed below. It requires SMPs to protect the functions provided by shoreline vegetation (described in the reference), and provides some examples.

> "Establish vegetation conservation standards that implement the principles in WAC 173-26-221(5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized."

WAC 173-26-221(5)(b) provides extensive discussion of the functions of buffers, multiple statements reinforcing the requirement to ensure no-net-loss of ecological function, and describes possible tools for protecting vegetation. It also indicates that "Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions." Thus, when development is allowed, compensatory mitigation needs to be provided to offset the impacts on ecological functions.

Using Science of Buffers. Designing an SMP, and especially the buffer system, to achieve no-net-loss of ecological functions is largely a scientific exercise, and the SMA is specific in its requirements to use science in developing the SMP. It requires using "a systematic interdisciplinary approach **which will insure** the integrated use of the **natural and social sciences** and the environmental design arts."[9] This science requirement is similar to the Growth Management Act's "Best Available Science" requirement. While each has its own terminology, these two science requirements are functionally the same in that they **require the use of current up-to-date science**. While not all Critical Areas Ordinances (CAOs) are adequately based on science, using the CAO buffers is a possibility for those jurisdictions that do have adequate science-based buffers in the CAO.

[8] WAC 173-26-241(2)(a)(iii).
[9] RCW 90.58.100, with emphasis added.

The science literature on the impacts of development near water bodies logically leads to the use of buffers to accomplish mitigation sequencing for shoreline waters (streams, lakes, wetlands, marine waters, etc.) and adjacent shorelands. Buffer science is discussed in detail later in this document.

Buffers Perform Mitigation Sequencing. A regulatory buffer of a width supported by science is one essential strategy for protecting the functions and values provided by intact riparian vegetation. We have observed some jurisdictions that choose to use different terminology than "buffers." These systems use "setbacks" with "vegetation management" requirements. Either choice can accomplish the protection of ecological functions provided by vegetation; however for simplicity this discussion primarily uses the term "buffers."

While an adequate buffer can accomplish much, it cannot mitigate everything, especially impacts from degraded upland areas and the broader watershed – for example stormwater, erosion, habitat loss, etc. Other regulations are needed to deal with such impacts, including those areas outside shoreline jurisdiction.[10] However, an adequate regulatory buffer can go far in providing mitigation sequencing:

(1) It helps accomplish the first task of mitigation sequencing – avoidance. ***But this is only the case if the buffer is wide enough and intact.*** An adequate buffer will help protect a large percentage of the functions that riparian vegetation provides, and will encompass the most important riparian habitat areas.
(2) An intact buffer can be a first step in minimizing the adverse impacts of development to functions that extend outside the buffer. It also reduces or helps minimize those repeating or ongoing impacts from adjacent development, such as water quality, glare, and noise impacts, by filtering pollutants, screening glare, and reducing noise transmission.
(3) For both degraded and intact areas, a science-based regulatory buffer also identifies an area within which new development will cause impacts that need compensation. In addition, when buffers are degraded, they provide a location where any impacts of the development can be compensated for by enhancing the degraded functions.

CAO Buffers Can be Used in the SMP. The SMP Guidelines allow jurisdictions to incorporate other policy and regulation documents into SMP. This means the CAO and its buffers can be incorporated into the SMP if they provide adequate protection. WAC 173-26-221 addresses incorporating a CAO into the SMP. Before 2011, paragraph (2)(c) described how this was accomplished, and is provided below. After the 2011 revisions, this section was deleted along with others, and replaced with a simple statement in paragraph (2)(a)(ii) that critical areas ordinances have to assure no-net-loss of ecological functions. Both citations are provided below [with emphasis].

> (2)(c) "In conducting the review for equivalency with local regulations, the department shall not further evaluate the adequacy of the local critical area regulations. Incorporation of the adopted and valid critical area regulations in effect at the time of submittal by reference as provided in section 173-26-191(2)(b) shall be deemed to meet the requirement for equivalency. However, a finding of equivalency does not constitute a finding of compliance with the requirements of this section and section (3) flood hazard reduction, nor with the guidelines overall."
>
> (2)(c)(ii) Provide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

[10] For example, to maintain the health of streams and salmon habitats, rivers basins should limit effective impervious surfaces to no more than ten percent and forest cover to no less than 65 percent.
Derek B. Booth, *Forest Cover, Impervious-surface Area, and the Mitigation of Urbanization Impacts in King County, Washington* p. 16 (University of Washington, Seattle Washington: September 2000). Accessed on April 30, 2011 at: http://depts.washington.edu/cuwrm/research/forest.pdf

The highlighted section (as well as other statements in the Guidelines) ensured that any policies and regulations that are incorporated also must meet the SMA and SMP Guidelines requirements.

Pitfalls to Avoid: Don't attempt to avoid using vegetative buffers. While we have not encountered such an example, we have encountered some jurisdictions that have considered not establishing buffers. Their reasoning seems to be that individual reports for every project will be able to establish ad-hoc buffers at the time of project review. Using vague standards instead of "designing" policies and regulations to accomplish no-net-loss fails to meet many SMP Guideline requirements, causes great problems with the CIA, and is discussed in detail in our guidance document dealing with these issues.

Pitfalls to Avoid: Don't assume the CAO buffers and regulations are adequate. Some jurisdictions assume that their COA is adequate to provide shoreline buffers. This is likely based on the assumption that, if it was not appealed it must meet the current science. In fact, our observations are otherwise. Most city CAO buffers are inadequate – and some don't even cover lakes, which are a basic CAO feature. County CAO buffers are more likely to be adequate (if updated recently), since they are more often held to the science requirements by appeals. In addition, we have encountered some jurisdictions that claim that the above quoted WAC requires the state to automatically accept the CAO and its buffers without objection. These jurisdictions seem to be reading only the first part of the paragraph without considering the highlighted portion. The result is an understanding that is the opposite of what the requirement means, implying that that Ecology can't review the CAO for its adequacy in protecting shoreline ecological functions. The SMP Guidelines only allow jurisdictions the option to use their CAO, but the CAO must first be adequate to meet SMP Guideline requirements. There is no obligation to use the CAO, nor a guarantee that it will be adequate. If it is inadequate, it cannot be used without updating the CAO or establishing special supplements to it for shoreline jurisdiction.

Pitfalls to Avoid: Don't try to avoid updating CAO buffers and regulations. Some jurisdictions expressly try to avoid updating their CAO, for fear of additional workload and/or creating controversy. Yet they intend to incorporate the CAO into the SMP. As described above, many CAOs are inadequate. So from the beginning of the update effort, jurisdictions should plan on fixing at least some parts of the CAO rather than rigidly insisting that the CAO cannot be touched.

Pitfalls to Avoid: Don't avoid incorporating the water-dependency preference in buffers. We have observed many jurisdictions that allow a wide range of development in their buffers, or provide many ways to avoid meeting the buffer. These examples typically allow development that is water-enjoyment or non-water-oriented. One jurisdiction provided three pages of exceptions to meeting a buffer. Very few developments should be allowed in a buffer – and these should primarily be based on their need to be in or near the water. All others should be required to meet explicit review criteria, similar to those found for Shoreline Variances and Conditional Use Permits. This approach accomplishes the first task of mitigation sequencing – avoidance. Of course, all developments inside the buffer should include compensatory mitigation for their impacts.

Pitfalls to Avoid: Don't "balance" away shoreline policy to accommodate development.
WAC 173-26-186(9) reads [with added emphasis]: "To the extent consistent with the policy and use preference of 90.58.020, this chapter (WAC 173-26), and these principles, local governments have reasonable discretion to balance the various policy goals of this chapter…" This is similar to the implementation statement in the SMA policy, in which preferences and priorities are established, but only in the implementation of the policy itself. (See our guidance document regarding use limits and preferences for a detailed discussion.) However, some jurisdictions have used the "balancing" phrase by itself as an excuse to allow development that has no need to be in the buffer without any regulations to accomplish mitigation sequencing. They then do not acknowledge the inherent impacts, nor require specific compensation for the losses, nor account for the losses in their Cumulative Impacts Analysis. Such a use of the "balancing" clause selectively ignores the requirement to be consistent with the policy to protect ecological functions. The facilities desired may be allowable, but they must still protect shoreline ecology to the extent feasible, and provide compensation for impacts to functions.

Vegetative Buffer Areas Perform Many Functions

The peer-reviewed scientific evidence has been reviewed and synthesized in several documents that show that intact buffers of adequate width are needed to mitigate the impacts of adjacent development on lakes, rivers, streams, marine waters, and wetlands. They in turn show that: (1) small buffers, even with intact vegetation, are incapable of fully mitigating development impacts; and (2) degraded buffers are unable to fully perform their buffering function.[11] An item of particular note is that some studies[12] found that riparian vegetation performed similar functions for all types of water environments.

Below is a bibliographic list of some of these scientific synthesis documents. They are generally oriented toward a particular water type, and they are grouped similarly here. They also include internet links for the reader's ease of access. *PLEASE NOTE: If some links do not operate, removing the last segment on the link may provide an alternate access path. Otherwise perform a search on that website or the internet in general.*

Lakes: Karen Cappiella and Tom Schueler, *Crafting a Lake Protection Ordinance*, Urban Lake Management, Watershed Protection Techniques 3(4) (2001). Accessed on April 30, 2011 at: http://www.cwp.org/Resource_Library/Center_Docs/special/lakes/ulm_lakeprotectionord.pdf.
Widths - p. 756; Functions - pp. 752-754.

Lakes: S. Engel and J. L. Pederson Jr., *The construction, aesthetics, and effects of lakeshore development: a literature review* (Research report 177, Wisconsin. Dept. of Natural Resources, 1998). Accessed on April 30, 2011 at: http://digicoll.library.wisc.edu/cgi-bin/EcoNatRes/EcoNatRes-idx?id=EcoNatRes.DNRRep177.
Functions - pp. 9-24; widths not addressed.

Streams, Lakes, and Marine: National Marine Fisheries Service - Northwest Region, *Endangered Species Act Section 7 Consultation Final Biological Opinion for Implementation of the National Flood Insurance Program in the State of Washington, Phase One Document – Puget Sound Region* (Sept. 22, 2008), ***also*** *Second Notice of Error and Correction in Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the on-going National Flood Insurance Program carried out in the Puget Sound area in Washington State* HUC 17110020 Puget Sound (May 14, 2009). Accessed on April 30, 2011 at: https://pcts.nmfs.noaa.gov/pls/pcts-pub/biop_results_detail?reg_inclause_in=('NWR')&tidin=29082,
also: https://pcts.nmfs.noaa.gov/pls/pcts-pub/sxn7.pcts_upload.download?p_file=F22552/200600472_FEMANFIP_errata2_05-14-2009.pdf.
Widths – p. 5 of the Second Notice and; Functions and development impacts: pp. 24 – 150 of the Final Biological Opinion.

Streams and Lakes: Spence, B. C., G. A. Lomnicky, R. M. Hughes, and R. P. Novitzki, *An Ecosystem Approach to Salmonid Conservation.* (ManTech Environmental Research Services Corp., Corvallis, OR, Doc.#: TR-4501-96-6057, available from the National Marine Fisheries Service, Portland, Oregon. 1996). Accessed on April 30, 2011 at: http://www.nwr.noaa.gov/Publications/Reference-Documents/ManTech-Report.cfm.
Widths - pp. 215-230 (esp. p. 229); Functions - pp. 51-55.

---

[11] In particular, from the subsequent bibliographic list, see: Spence et al., *An Ecosystem Approach to Salmonid Conservation.* (ManTech Report for NOAA) Chapter 6: Effects of Human Activities.

[12] From the subsequent bibliographic list, see:
Sheldon, et al., *Wetlands in Washington State - Volume 1,* p. 5-25 to 5-26,
Brennan and Culverwell, *Marine Riparian*, pp. 2 & 16. and
EnviroVision, et al., *Protecting Nearshore Habitat, p. III-38.*

Streams: K. L. Knutson & V. L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* (Wash. Dept. Fish and Wildlife, Olympia WA, 1997). Accessed on April 30, 2011 at: http://wdfw.wa.gov/hab/ripfinal.pdf.
Widths - p. 87; Functions - pp. 19-38.

Wetlands: D. Sheldon, T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* (Washington State Department of Ecology Publication #05-06-006, 2005). Accessed on April 30, 2011 at: http://www.ecy.wa.gov/biblio/0506006.html.
Widths – all of Chapter 5 & p. 5-55; Functions – All of Chapter 2 & parts of Chapter 3 and 4.

Marine: EnviroVision, Herrera Environmental, and the Aquatic Habitat Guidelines Working Group, *Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide* (October 2007). Accessed on April 30, 2011 at: http://wdfw.wa.gov/hab/nearshore_guidelines/.
Widths - pp III-38 to III-41; Functions - pp. II-38 to II-46.

Marine: J. S. Brennan, and H. Culverwell, *Marine Riparian: An Assessment of Riparian Functions in Marine Ecosystems* (Washington Sea Grant Program, University of Washington, Seattle, 2004). Accessed on April 30, 2011 at: http://www.wsg.washington.edu/research/pdfs/brennan.pdf.
Widths - p. 16; Functions pp. ii-iii & 3-14.

The following table summarizes the buffer widths recommended in these synthesis studies that are needed to protect the wide variety of ecological functions that buffers perform. Specific functions are described in more detail below the table.

Summary of Buffer Recommendations from Selected Studies

Science Review Source	Recommended Vegetated Buffer Width			
	Stream	Wetland	Lake	Marine
Cappiella and Schueler, *Crafting a Lake Protection Ordinance* (Review of Lake Ordinances)			Range from 50-150'; Septic 100'+	
Engel and Pederson, *The construction, aesthetics, and effects of lakeshore development*			Only functions listed	
National Marine Fisheries Service, *ESA Consultation Biological Opinion for NFIP in Wa. State*	For Shorelines: the greater of 250'; or CMZ +50'; or floodway,		150'	200'
Spence et al., *An Ecosystem Approach to Salmonid Conservation*. (ManTech Report for NOAA)	1 site pot. tree height (up to 150')		1 site pot. tree height (up to 150')	
Knutson & Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* (WDFW)	150-250' per str. type + floodplain			
Sheldon et al., *Wetlands in Washington State - Volume 1: A Synthesis of the Science* (Ecology)		150'-300' for most human uses		
EnviroVision et al., *Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide* (Aquatic Habitat Guideline Working Group)				150-200'
Brennan and Culverwell, *Marine Riparian: An assessment of riparian functions* (SeaGrant)				>30m (>100')

The science of intact buffer areas of adequate width shows that they perform many functions - some of which are provided below and grouped by similarity. The SMP Guidelines also describes vegetation functions in WAC 173-26-221(5)(b).

Water Quality and Infiltration Functions of Vegetation

- Inhibiting surface erosion from surface runoff and flood flows.
- Filtering sediment from surface runoff and flood flows.
- Removing and transforming nutrients and harmful substances from surface runoff and flood flows.
- Infiltrating and storing surface runoff and flood flows into groundwater for later release to water bodies.
- Removing and transforming nutrients and harmful substances from groundwater passing through root zones.

Stabilization Functions of Vegetation

- Providing stabilization to streambanks, lake shores, and marine waters against erosive water forces through root mats and root-strength.
- Contributing in-water woody debris which reduces and slows erosive water forces against streambanks and lake shores through barriers and increased roughness.
- Protects uplands from surface erosion caused by storms and rising sea levels.

In-Water Habitat Contributions Functions of Vegetation

- Providing fish with over-water hanging cover from predators.
- Providing shade to help cool the water, especially for shallow margins.
- Contributing in-water woody debris needed for creation of fish habitat.
- Contributing in-water organic matter to support fish food species (insects and invertebrates), and other aquatic life.
- Screening or dampening noise, glare, and human activity from the water.

Land Habitat Functions of Vegetation

- Providing refuge for fish from fast flows during floods, as well as access to new food sources.
- Providing wildlife habitat areas (for feeding, reproducing, resting, etc.) for riparian species, and for upland species that use riparian areas. This includes the small species (such as amphibians, small mammals, birds, and insects) that serve as food for larger species.
- Contributing large woody debris needed for small animal habitat, as well as larger animals.
- Providing a wildlife dispersal and migration corridor along the water to other areas.
- Generating organic matter needed for foundation of food web.
- Providing natural processes and food web functions to support wildlife.
- Altering the microclimate near the water to be more suitable for aquatic and riparian species by sheltering from wind, holding humidity, etc.
- Screening or dampening noise, glare, and human activity.
- Providing separation from human activity for sensitive aquatic and upland species.

Pitfalls to Avoid: Don't avoid identifying the science used to develop the SMP. We have observed some jurisdictions that do not include a science review in their update, contrary to the SMA's science requirement (discussed previously). Consequently, their regulations had little or no basis in science, particularly the buffers. These jurisdictions also typically assume their CAO is adequate to protect shoreline ecological functions, when it actually is not based on current science.

Pitfalls to Avoid: Don't exclude certain functions from description in the SMP. While almost all SMPs discuss the functions that buffers perform, some fail to describe all the different functions. Certainly the water quality and stabilization functions need to be included, and most jurisdictions do so. But the habitat functions also need to be included. We have observed some cities that exclude the habitat functions, apparently because of an assumption that only large animals that don't occur in

the city constitute wildlife. This problem tends to manifest in different ways. Sometimes the focus is entirely on fish habitat, and upland habitat is excluded. Sometimes both fish and wildlife functions are excluded. As indicated in the function descriptions, small animals are part of the food web and also need habitat. The SMP needs to fully describe all the functions that buffers perform to ensure that future readers (both developers and staff) are cognizant of the functions that must be protected.

Developments Impact Both Intact and Degraded Shoreline Functions

The currently available science on the characteristics needed for buffers to work has several ***policy implications*** that bear on the development of a buffer system that can work in different situations:

1. If the science-based buffers have intact vegetation, they can provide functions and protect the resource from most impacts of adjacent development, but some impacts will still exist.
2. If science-based buffer widths are met but they do not have intact vegetation, they cannot provide all of the functions nor protect the resource from adjacent development and there will be impacts.
3. If development takes place within the buffer area, whether intact or not, there will be impacts.
4. In the case of existing development within the science-based buffer width, the vegetation is both degraded and there is not enough width. Additional development in the science-based buffer area will increase the impacts.
5. Establishing a buffer system that incorporates assumptions that fail to identify impacts systematically establishes built-in impacts in the SMP protection system.

Thus, almost all development has negative impacts. Expansion of existing development on degraded sites, new development on vacant land, and redevelopment for different uses all adversely affect shoreline resources and functions. In fact, even existing development can continue to cause impacts to ecological functions.

Functions on a particular site range on a continuum. Even when science-based buffers are degraded, they still perform functions at a dampened level, depending on the amount of degradation. Even heavily degraded shorelines will perform functions at a very low level. This is specifically stated in the SMP Guidelines,[13] and documented in the science literature that compares developed and undeveloped sites. For example, even lawns can provide better animal feeding, runoff treatment, and other functions than paved surfaces and structures. New impervious surfaces and more intensive use will degrade these even further. Thus the remaining functions can still be impacted by new development. Below are descriptions of how development adversely impacts shoreline resources.

- **Water Quality and Infiltration Impacts**. New structures and impervious surfaces increase runoff volumes, remove vegetation, remove native soils that absorb water, and reduce the area available to infiltrate those volumes. These impacts may be partially mitigated through stormwater ordinances. However, stormwater regulations generally only address increased peak runoff volumes, not the other impacts.[14] In addition, small developments are only required to comply with some of the storm water requirements, thus reducing the ability of those regulations to address the full range of impacts.[15]
    a. The increased runoff is focused into smaller receiving areas, thus increasing the erosive power and sediment carrying ability of the surface runoff in those areas.
    b. Where infiltration can still occur, the focused runoff drives infiltrated water to the groundwater table more rapidly with less opportunity for soil treatment.
    c. Less vegetation area is available to filter sediment and nutrients from flood waters and the larger volumes of surface runoff passing over the site.
    d. Less native soil and vegetation root structure is available to treat groundwater.

[13] WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions.
[14] Washington State Department of Ecology, *Stormwater Management Manual for Western Washington Volume 1 – Minimum Technical Requirements* pp. 1-20 – 1-26 (February 2005). Accessed on April 30, 2011 at: http://www.ecy.wa.gov/biblio/0510029.html
[15] *Id.* at p. 2-9.

e. The trend of decreased infiltration in a drainage basin changes the hydrology of the basin by increasing winter flows and deceasing summer and fall flows, adversely affecting water quality and aquatic habitats.

- **Vegetation and Habitat Simplification Impacts**. Adding new structures, additions, or impervious surfaces, and removing or simplifying vegetation (cutting trees, replacing shrubs with lawn, paving, etc.) also adversely affect habitat:
  a. Higher value habitat areas and migration pathways are eliminated or replaced with lower value areas, until the most simplified areas (open impervious surfaces) have only limited value for migration pathways and separation areas. More complex areas for nesting and refuge are most susceptible to loss.
  b. Substituting native vegetation with non-native species, or their total removal, results in a loss of food sources for the entire food web. For example, many native insect species cannot effectively use non-native vegetation for food. The reductions in insect populations then affect the fish that feed on them.
  c. Natural processes, insect food sources, and food web functions are reduced or eliminated with the progressive removal of complex vegetation elements.
  d. Species (large and small) capable of using degraded areas are greatly reduced with greater degradation.
  e. Microclimate is altered for species currently using the site.
  f. Reduces the organic matter input to the water from drifting and blowing wind that supports the aquatic food web and aquatic life.
  g. Reduces the large woody debris input from trees and branches falling into the water that is needed to form and diversify fish and aquatic life habitat.

- **Stabilization and Shading Impacts**. Removing or simplifying vegetation near water also:
  a. Reduces the root strength and root mats that provide bank stabilization.
  b. Increases sun exposure on shallow water areas and heats them.

- **Human Use Impacts**: Residential uses have additional impacts, not directly related to construction, that increase with enlargement or expansion of the use. Aside from lighting, very little can be done to mitigate these impacts – they are a function of the existence of the development. Such impacts would have to be compensated for using out-of-kind mitigation, and possibly off-site mitigation. Non-residential uses can have impacts similar to residential uses that vary depending on the activities and the level of use.
  a. Human presence and activity that impacts or drives off fish and wildlife. Bigger residences typically mean more people on the property, whether family members or guests.
  b. Pets that prey on or drive off fish and wildlife. More family members increase the likelihood of having more pets.
  c. Machinery and vehicular noise that impacts or drives off fish and wildlife. More people on the property increase the likelihood of having more machines and vehicles – including automobiles, watercraft, yard machinery, and recreational vehicles.
  d. Use of chemicals and fertilizers for house and yard. Larger structures and grounds increase the use of chemicals.
  e. Use of night lighting that impacts or drives off fish and wildlife. Larger structures and grounds typically increase the use of exterior night lighting and escaping interior light.

- **Ongoing Impacts**. Existing development that has inadequate buffers can also have ongoing impacts or impacts that increase over time. While shoreline master programs do not apply to most existing uses, allowing an expanded, redeveloped, or new use that continues to use an existing degraded or non-existent buffer will result in increased impacts and an increased loss of shoreline functions, contrary to the requirements of the SMA. Further, shoreline master programs do apply to ongoing activities that require five year permit renewals. The SMP should require measures to protect shoreline functions when those permits are renewed.

a. Inadequate buffers allow larger pollutant loads to pass than intact buffers. Thus the receiving waters become more and more contaminated as pollutants build up in aquatic sediments and the water body year after year. Some pollutants are removed or transformed by flushing and biological processes, but others build up over time.
b. Inadequate buffers allow larger sediment loads to pass than intact buffers. Thus aquatic life and habitat areas continue to be smothered by sediment, and water turbidity continues to impact organisms.
c. Buffers next to a development tend to degrade over time through continual small encroachments, so existing uses increase their pollution loads as the buffers degrade. The degraded buffers also provide fewer functions and mitigate fewer impacts.

Pitfalls to Avoid: Don't use assumptions that avoid accurately accounting for impacts. The above descriptions of functions and impacts to them show that with few exceptions, all development has impacts that need to be subject to mitigation sequencing. Unfortunately, ***one of the biggest problems we have observed is the systematic failure to acknowledge impacts*** by using a wide variety of assumptions. These assumptions are addressed in detail below.

Our guidance document addressing no-net-loss, cumulative impacts, and restoration also discusses this major problem of accurately accounting for impacts in the broader context of accounting for ecological functions and impacts of development. The reader should see that document to supplement the descriptions of impacts to buffers provided here.

Assuming that conversion of intact areas has no impacts. The most substantial loss of ecological function comes when new development in largely intact and undeveloped areas (those that should have protective environments) displaces vegetation that provides ecological functions and wildlife habitat - both inside and outside the buffer. A more common situation is when SMPs allow development inside a largely intact buffer (for access, docks, driveways, bridges, utility crossings, water-dependent recreation, etc.). Few SMPs require the replacement of this habitat by requiring a trail or road crossing to replace the displaced buffer vegetation. The main problem is that, while a project on a degraded site can provide compensatory mitigation on-site, how do you provide compensatory mitigation on an entirely intact site or for an intact buffer? There are little or no enhancement opportunities – certainly not at the same scale of the development impacts. This is why it is critical to both limit uses in protective environments, and limit development within buffers to uses that need to be in or near the water (water-dependent or water-related uses) – other development needlessly causes loss of functions.

The above examples allow the conversion of functioning shorelines to higher intensity uses (whether by planned intent, or by the omission of protective regulations), and thus "plan for" these ecologically intact areas to be converted to human use areas. Without explicit compensatory mitigation requirements, there is no chance for these functions to be replaced. But even with compensatory mitigation, there will be a loss of ecological functions that site-specific project mitigation almost certainly cannot mitigate due to elimination of wildlife habitat (both inside and outside the buffer), and increased human presence that drives off wildlife, as described in the next assumption.

Not considering the impacts on fish and wildlife of human presence. A more indirect impact is that injecting human users into largely intact areas or intact buffers – even with relatively minor development like trails – drives off fish and wildlife. Most people have experienced driving on a road and seeing wildlife. The animals may tolerate the presence of the vehicle, but when people get out of the car, the animals flee. Similarly, people who are avid fishers know that fish flee from human disturbances in and near the water, and on a dock. We have observed no SMPs that address this impact in their regulations, yet it is sometimes the largest impact. Mitigating for human intrusion will likely require out-of-kind compensatory mitigation, and possibly require off-site mitigation.

Assuming that degraded buffers have no functions to impact. While the above examples use relatively intact areas to demonstrate the point, even degraded areas have ecological functions that can be further degraded. Planners often equate degraded sites to having no functions to impact. This then is thought to allow

unlimited additional development near the water. However, this point of view has no logical basis in the buffer science, and is inconsistent with the concept of mitigation sequencing. Degraded buffers still perform low levels of functions, and additional development continues to impact them. The existence of lower levels of ecological function does not lessen the impacts of the development; it only reduces the maximum possible loss of functions caused by those impacts. Even converting lawn or degraded vegetation to sidewalks and roads further degrades those areas for ecological functions and habitat use.

Assuming that avoiding more damage to degraded buffer vegetation equates to having no impacts. Another version of the above assumption mistakenly equates development impacts to whether damage is directly caused to the vegetation, resulting in the approach that a project leaving degraded ecological functions in place is the same as having no impacts. This is incorrect. New development will have impacts whether vegetation is intact or degraded. But degraded vegetation will have a lower maximum possible loss of function.

Assuming that degraded buffers can prevent impacts. Some planners assume that meeting a degraded buffer width (whether small or science-based) automatically means there will be no impacts. The science shows that intact vegetation is needed to provide functions and buffer impacts. Degraded buffers cannot function fully and will automatically allow impacts. Such a system does not have a logical basis in science. If the buffer vegetation is not required to be made functional, the only way to reduce development impacts is to require additional separation with a larger setback. We recommend that the regulations require double the buffer width as a setback to avoid enhancement requirements.

Assuming that meeting small buffers can prevent impacts. A slightly different version of assuming that degraded buffers can prevent impacts is when planners assume that a small buffer works the same as an intact science-based buffer, and will adequately provide functions and prevent impacts as long as development is outside the buffer line. This then is thought to allow unlimited additional development outside the small buffer line. Like other pitfalls described above, there is no logical basis for such an assumption. Simply making the regulatory buffer width smaller to match the existing development does not change the presence of impacts. Small buffers are already degraded, even if the small width is well vegetated (which is often not the case). The science shows that inadequate width buffers cannot perform functions or mitigate impacts. In the worst cases, we have observed small buffers applied to totally intact shorelines, and to vegetated areas that are larger than the small width. This approach also causes major losses from converting intact areas to human uses, as described above.

Assuming that waiving buffers for some development has no impacts. We have observed a practice of systematically waiving buffer requirements for broad lists of facilities – many of which can be placed outside the buffer without eliminating their function. We have seen this pattern in almost all jurisdictions (to a greater or lesser extent) regardless of whether buffers are intact or not, and use science-based widths or not. But it typically is not accompanied by any specifics about providing compensatory mitigation along with the development. A widespread example is that trails are often allowed in the buffer with few limits, and thus allowed at the water's edge, when they could be placed outside the buffer or in the margins with no loss of their function as a trail. Access to water-dependent uses and facilities could be provided with spur trails, and are appropriate. Another common example is allowing stormwater facilities to displace buffer vegetation. Only water-dependent and water-related uses (including road and utility crossings, water-based recreation, physical public water access, etc.) should be allowed inside the buffer. Any other exceptions need to include criteria for avoidance and minimization, similar to Shoreline Variances and Conditional Use Permits. All instances (water-dependent or not) should also include specifics about how to do compensatory mitigation for that kind of development.

Assuming that minimization standards prevent impacts. A common assumption is that minimization will prevent impacts. Minimization is a part of mitigation sequencing, and by definition the term only reduces impacts – it doesn't avoid them. Thus development that meets minimization standards must still compensate for the remaining impacts. Minimization is commonly used for in-water development (such as docks, boating facilities, stabilization, etc.). Unfortunately, while the minimization standards may be included, there are usually no standards describing how to do compensatory mitigation for such development.

Mitigation for impacts to buffers. As previous described, the SMP regulations need to be "designed" to accomplish no-net-loss and mitigation sequencing. Accomplishing this means using a science-based buffer width wherever possible, and only allowing development within the buffer when there are no other alternatives (water-dependency, existing development that meets hardship or need criteria, etc.). Any water-enjoyment and non-water-oriented uses need to include criteria for **avoidance and minimization**, such as those found for Shoreline Variances and Conditional Use Permits. This accomplishes much of the avoidance and minimization components of mitigation sequencing.

Contrary to the above assumptions, development in or adjacent to the buffer will almost inevitably has built-in impacts, and built-in mitigation needs to be required to eliminate as many as possible. Even for existing developed areas, increasing the development size or intensity just makes the impacts worse. And even providing an intact, science-based buffer will have small impacts. Thus compensatory mitigation is needed for almost all new development situations. Eliminating impacts requires that the SMP (a) have a default position that, except for rare instances, development will have impacts, (b) require compensatory mitigation plans with each project, (c) include a policy to focus the compensatory mitigation on enhancing degraded conditions, and (d) include specific compensatory mitigation standards for different types of development (docks, armoring, residential development, recreation uses, etc.).

While buffer systems that do not compensate for impacts are not allowed by the Guidelines, using them also means that the jurisdiction must replace these lost functions at its own expense. This greatly complicates the Restoration Planning and Cumulative Impacts Analysis for the jurisdiction, making it extremely difficult to demonstrate that lost ecological functions will be replaced in some manner, and making it practically impossible to achieve no net loss of shoreline functions.

While all development in or next to the science-based buffer should include specifics about **compensatory mitigation**, doing so in areas of existing development may have to be done differently than for development of a vacant or generally undeveloped lot. For example, the lesser impacts of expanding existing development should be focused on enhancement of the degraded conditions between the development and the water. But the greater impacts of new development on vacant land or for redevelopment should be mitigated by enhancement of the full buffer's width. Where the buffer is already intact, other options need to be used, such as removing armoring or other alterations.

Options for Buffer Systems in Different Situations

Based on the discussion above, it is possible to develop a buffer system that is logically consistent with the science for the wide variety of conditions that exist. A science-based regulatory buffer can provide a means of avoidance and minimization. But systems that avoid identifying impacts are ineffective, fail to comply with the SMA, and result in a system with built-in adverse impacts to, and loss of ecological functions. The most prominent example is the use of small buffers ***alone.*** The only acceptable strategy for using small buffers is if:

(A) They are limited to situations where there are no alternatives (existing development areas) and thus inherently have some level of hardship and mitigation sequencing.

(B) The built-in impacts are offset by built-in mitigation measures, including mitigation for habitat impacts. This is best accomplished by an improvement of the existing degraded buffer or habitat conditions.

While small buffers can be used with validity, it must be only one part of a system that addresses the range of different shoreline conditions in a logical and systematic manner. Below is our recommended strategy for a buffer system (or setbacks with vegetation management standards) that can deal with a variety of situations. PLEASE NOTE that we understand that the details of this strategy can take many forms, but they should cover all these situations when they are present within the jurisdiction.

1. **For all SMPS**, the buffer systems need to be supported in the SMP policies. A specific policy is needed for any small buffers that are used to indicate how they are supported by scientific information. The policy should also support the specific manner in which they are used. We recommend a policy similar to the following:

   SMALL BUFFER POLICY: While buffers widths based on science are necessary to protect ecological functions, using them is not possible in existing heavily developed areas, such as along some parts of [FILL IN THE BLANK]. In such areas, an alternative strategy is established using smaller buffers [OR setbacks] that are based on the existing development pattern, in combination with mitigation requirements for new development that provide enhancement of degraded features as compensatory mitigation for impacts of the new development both inside and outside the small buffer widths.

2. **All shoreline areas** should be carefully mapped using existing air photo data analysis, and the setbacks and vegetation condition in areas of existing development should be characterized. This should be part of the inventory and characterization step of the SMP update. When broad variations exist in setback and vegetation, the areas should be categorized based on the character, so the buffer system can consider such variations. Our guidance document dealing with shoreline environments provides a detailed discussion of requirements related to mapping, the use of existing data, and analysis of the existing data. If buffers are to be tied to the environments, it is critical that the environments be assigned based on the condition of the shoreline buffer vegetation.

3. **In all shoreline areas, especially unusual situations**, standards requiring existing vegetation to be protected whenever possible are needed. This is especially necessary for in-buffer vegetation. But vegetation outside the buffer should also be protected by locating development so it has the least impact, and limiting the disturbed area to the minimum needed for the use. This prevents the loss of all vegetation outside the buffer line within intact areas for no important reason. Some shorelines are heavily developed and altered in a narrow band immediately adjacent to the water, but may be entirely intact behind the developed band. These extensive intact areas still have functions, especially for habitat, and need protection. Some shorelines are developed at rural or suburban densities close to the water, but the residences are sprinkled amongst intact vegetation. These intact areas both inside and outside the buffer need protection. In both of these cases, using only setbacks or buffers based on existing development patterns (as described in 6 & 7 below) would allow these areas to be cleared, and allow the ecological functions to be lost.

4. **In intact areas, and developed areas with largely intact shoreline vegetation**, science-based regulatory buffer widths need to be adopted to protect them from further degradation.

5. **Undeveloped areas with degraded buffers** also need science-based regulatory buffer widths applied to them. However degraded or unvegetated buffers will be ineffective at buffering the impacts of new development. So the buffer system also needs clear statements that using the minimum buffer width for other than very low intensity uses is contingent on it being made functional through enhancement mitigation that plants native understories, shrubs, and trees across the shoreline (with allowances for water access and water-dependent uses). Since the only alternative way to mitigate the new impacts is reducing them through additional separation, projects that do not provide enhancement mitigation should use a setback that is twice the buffer width.

6. **For new development in developed areas already inside or adjacent to the buffer**, establish setbacks for the developed areas. This can use one of two approaches:
   a. Continue to use the science-based buffer width used for intact areas in order to identify the area where development must be accompanied by compensatory mitigation, and limit development any further waterward.
   b. Tailor the setback width to the predominant setback for different locations and limit development any further waterward. Different widths for different locations will almost certainly

be needed, and a single width set to the minimum width present in the jurisdiction does not accomplish adequate protection.

7. **For new development in developed areas already inside or adjacent to the buffer**, establish built-in compensatory mitigation using specific enhancement standards. Establish minimum enhancement requirements for all expansions, including those outside the small setback width. Establish tiered enhancement mitigation requirements for the more extensive types of development, including changes of use. For example: small improvements might re-establish a narrow width of vegetation, while a tear-down-rebuild or change of use might re-establish the entire buffer or remove armoring. The draft Issaquah SMP provides the best example of how to do this.

   The minimum enhancement mitigation width needs to be wide enough to function, and function over time. For example, the narrowest high quality buffer that can filter nutrients is 13 feet, and for filtering pollutants you need 33 to 52 feet.[16] Also consider that buffers degrade over time as they filter out nutrients and pollutants. The area needs to be at least 20 feet wide (enough for a fully grown tree) to provide minimum functions. Wider buffers are needed to protect other important shoreline functions.

8. **For other development inside the buffer**, such as buffer reductions, buffer waivers, water-dependent uses, built-in compensatory mitigation requirements need to be specifically described that will mitigate development impacts. This should include various means of enhancing the degraded shoreline areas where doing so is possible – such as planting native shoreline vegetation, removal or reduction of unnecessary shore armoring or other near-water structures, etc. If vegetation is intact, it may require off-site mitigation. Where native vegetation is planted, it needs to include native groundcover, shrub, and tree planting; and needs to extend across the shoreline with allowances for water access.

9. We have observed some SMPs that **include incentive approaches** for their buffer system to encourage buffer enhancement. While we encourage incentives, they can't be substituted for thorough protections. When improperly used, the typically result is a small buffer in which any project enhancement is optional - based on choosing to use an incentive. The incentives also encourage additional development extremely close to the water. Simply meeting the small buffer and not choosing the incentives allows unlimited development outside the buffer, while ignoring the built-in impacts of such a system.

In addition to built-in mitigation in the form of enhancement, the use of small buffers means other impacts need to be much more carefully controlled, which means the use of additional standards.

- Only very limited uses and facilities should be allowed in the setback, and none can be allowed within the replanted areas if they are to function. Encroachments into a buffer or setback vegetation should be limited to those that are water-dependent and water-related. Water-enjoyment and non-water-oriented uses and facilities can function without being in the buffer area.
- Low impact development (LID) techniques should be required to minimize storm water runoff and help maintain a more natural hydrologic system. This is needed to help reduce the polluted storm water that would otherwise overwhelm the narrow planting strip.
- Major redevelopments and changes in use, which usually result in great intensification, must established scientific based buffers to ensure no net loss of shoreline functions.
- For permits of activities that require renewal every five years, buffers or setbacks and vegetation plantings should be required.

[16] K. L. Knutson & V. L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* p. XI, p. 164 (Wash. Dept. Fish and Wildlife, Olympia WA: 1997).

Tim Trohimovich,	spoke as co-director for planning and law of Futurewise, a statewide non-profit organization that works to maintain healthy communities and protect working farms, forests and shorelines. He said Futurewise was one of the organizations that worked to prepare the guidelines for Shoreline Master Programs. Like Bellevue, most jurisdictions have not systematically updated their programs since first being adopted in the 1970s. Such plans are desperately needed. Lake Washington has no less than three threatened species: Chinook salmon, steelhead trout and bull trout. It should not be necessary to list even more species before getting serious about protecting resources. In 1971 when the voters of the state adopted the Shoreline Management Act, they did it with a promise to protect statewide resources, including the fish and wildlife and the state-owned shorelines. Unfortunately, in large part because the adverse impacts of development on the shorelines were not understood, the vision of the original Shoreline Management Act has not been kept. He strongly urged the city to adopt a Shoreline Master Program that sustains the vision and that will protect existing resources. Futurewise supports many of the provisions in the draft Shoreline Master Program update. There are, however, some important improvements needed. The draft in fact weakens some protections that exist for shoreline resources. The Shoreline Management Act in RCW 90.58.090(4) requires that Shoreline Master Programs be at least as protective as the critical areas ordinance, but Futurewise believes the draft does not meet that test. Furthermore there are inadequate standards for some of the allowed uses that would adversely affect Lake Washington. In areas that have intact vegetation, the city should adopt science-based buffers that protect the vegetation and the shorelines. When development occurs that adversely impacts the shorelines, the impacts should be mitigated. The way the vegetation protection requirements and buffer requirements interact should be drafted in a way that will result in actual protections for the shorelines. He thanked the Commissioners, the public and the staff for all the work that has gone into the development of the draft Shoreline Master Program.	**32.62** **32.63** **32.64** **32.65** **32.66** **32.67**

To: City of Bellevue Planning Commission

Comments on Draft SMP at Public Hearing 5-25-2011

My name is Elliott Severson. I currently reside at 1600 W. Lk. Samm. Pkwy. NE. I have lived on the lake for the last 23 years. I have built two homes from the ground up. I have completed substantial remodels on two other properties. I am in the process of doing my third ground up construction.

The people in this room care about the lakes they live on. I have no doubt that 90+% of the people that live on Bellevue lakes would voluntarily comply with ideas and suggestions that would materially benefit the lakes. However, there needs to be real science and real reports documenting the benefits, not just staff's belief that "this is a good idea and good for the lake". In my years of living on the lake I have seen numerous new rules and regulations that have been imposed with no scientific evidence to support the change. When I installed a new dock in early 2000 I was told that I could not use wood piles that I had to use steel piles. When I asked why, I was told that the bass hid behind the big wood piles and would eat the fingerling that swam under the dock. I told them that the fingerlings did not swim under the dock that they swam out at the end of the dock. They told me I was wrong. It was nice to see the study a few sessions ago that proved that the fingerlings do in fact swim out at the end of the piers and not through the docks. **33.1**

In another instance I was repairing an existing bulkhead and as mitigation I had to partially submerge two large trees with branches on in my waterfront area. . I protested that I thought this was a real hazard as I had small children and I did not want them to get caught or impaled on the branches. My concerns were dismissed and I had to put the trees in. A few years later I was meeting with a Bellevue City official on another matter and I again pointed out the trees and mentioned what a hazard I thought they were. The City official told me "yeah that's a federal rule we think it is dumb as well". As property owners who pay a great deal of taxes to live on the lakes, we do not mind doing things that make sense, but we do not want to be jerked around with new rules and regulations that have little or no scientific support and are of little or no real benefit to the health of the lake.

As has been pointed out often before, if the City really wants to improve the health of the lake, they should be concentrating their efforts on improving and controlling the storm water discharge from the surrounding basin. This is an area where substantive improvement could be made in the health of the lake. **33.2**

I strongly support the Washington Sensible Shorelines Association plan. I have reviewed the Staff generated SMP and there are many problems in this document. Charlie Klinge has done an excellent job critiquing the Staff draft plan and I urge each of you to read his comments carefully. **33.3**

I would like to touch on two examples from the SMP first:

"Context Sensitive Design. Design shall minimize topographic modification. Structures shall conform to the natural contour of the slope. Foundations shall be tiered to conform to the existing topography and **33.4**

step down the slope with earth retention incorporated into the structure where feasible. Standard prepared building pads, i.e., slab on grade, shall be avoided." What does this really mean? There is no support for what benefit this provides. This may work fine on some sites, but it could be an extreme burden on others. There is no need and no benefit from such mandatory micro management of the design process.

This example highlights a critical component of any new regulation. It is extremely difficult if not impossible to craft a new rule/regulation that works well on all sites and conditions. Although we have a small area, we have an extremely diverse set of site circumstances on individual parcels. This means that we should be very hesitant to adopt new and expanded regulations because they may not be well thought out and may not work for all property conditions. I have seen from my own experience that once a rule passes, that is the rule. I have seen staff struggle in situations where they can see that the rule makes no sense in a particular instance, but it is very difficult for them to do anything but follow the rule.

The second example is the proposal to increase the setbacks from 25' to 50'. Staff has provided no ecological justification for the larger setback. This change is unfair as well as unnecessary. For instances, some lots in Rosemont are cut by an access road and may only have 100' of area between the ordinary high water mark and the road. This regulation would be very penal on these properties. This regulation will also be a nightmare for anyone wanting to remodel an existing house that is currently in the 25' to 50' range. No matter what staff says, this rule will be an unnecessary problem for these homes in the future. Again, this is a taking of private property rights for no good reason. This is a proposal that has no scientific basis, will affect property values, create disparities in adjacent parcels and will have a host of unintended consequences down the road. **33.5**

Finally, it makes no sense to me that we should be subject to additional takings on our properties, thru the increase in the Ordinary High Water mark simply because the government is not doing its job of maintaining the outflow on the lakes. This is nuts. If the outflows were properly maintained, the bulkheads would not be such an issue and we would not be faced with potential property damage. Another consequence of this issue is that as the OHW mark goes up the flood plain level will rise and many homes around the lake will suddenly find themselves built within the flood plain. Again, there is no reason for this to be an issue if the government would simply do its job. **33.6**

In closing, I urge you to support the WSSA Sensible Plan. I urge you read Charlie Klinge's critique of the Staff's draft SMP and I caution all of us to resist passing any new regulations that are not scientifically supported and that have a demonstrable benefit comparable to their cost.

Thank you,

Elliott Severson

Elliot Severson,	he has lived on the lake for the past 23 years during which time he constructed two homes from the ground up, completed substantial remodels on two other properties, and is currently pursuing a third ground-up construction project. He said shoreline property owners care deeply about the lakes they live on. Most would voluntarily comply with ideas and suggestions that would materially benefit the lakes. However, there must be real science and reliable reports documenting the benefits, not just ideas from staff with regard to what will be good for the lake. Over the years numerous new regulations have been imposed without scientific evidence to support them. During construction of a new dock in 2000, steel was required rather than wood on the claim that bass hide behind the wood and eat fingerlings; the fact is fingerlings swim out at the end of the dock, which has since been shown by a reliable study. In another instance, work to repair an existing bulkhead triggered mitigation in the form of partially submerging two large trees with branches in the waterfront area; a few years later a city official said the rule was handed down from the federal government and was seen by most as being unfounded. Shoreline property owners do not mind doing things that make sense but do not want to be jerked around with new rules and regulations that have little or no scientific support or benefit to the lake.	**33.7**
	The city should be concentrating its efforts on improving and controlling the stormwater discharge from the surrounding basin.	**33.8**
	The Washington Sensible Shorelines Association plan should be supported. The staff-generated draft Shoreline Master Program has many problems. With regard to context-sensitive design, there is no support for what benefit the new standard would provide and could be an extreme burden for some. No rules or regulations can be expected to work well on all sites and conditions given the wide diversity of site circumstances on individual parcels. Once rules are in place, they must be followed even if they make no sense in a particular instance.	**33.9** **33.10**
	The proposed increase in the setback from 25 feet to 50 feet is not supported by any ecological science; it is both unfair and unnecessary and constitutes a taking of private property rights.	**33.11**
	Rising water levels and maintenance of outflow should be dealt with by the government.	**33.12**

May 25, 2011

Good Evening Chair Ferris and Commissioners,

My name is Marv Peterson and I am the Immediate Past President of the MBNA—the Meydenbauer Bay Neighbors Association which is made up of over 1300 families, 8 condominium associations, and the Meydenbauer Bay Yacht Club. I am also a shoreline owner on Meydenbauer Bay at 9840 SE Shoreland Drive.

I have handed in formal written comments on the Draft Shoreline Master Program from MBNA. MBNA's primary interest in making these comments is in relation to the Meydenbauer Bay Park. After significant effort by MBNA, the City Council agreed to adopt Implementation Principles as an integral part of the Meydenbauer Bay Park Master Plan, and those Principles ensure thorough review of the concerns expressed by the MBNA. MBNA wants to ensure that the Draft SMP limits the uses and development at the Meydenbauer Bay Park to what was approved in the Park Master Plan including those Implementation Principles which are attached to the written comments. 34.1

Staff indicates agreement with that in general and the comments address changes that will make that intention clear.

In addition, MBNA believes that the Meydenbauer Bay Park should be processed under as a Shoreline Conditional Use to ensure greater public participation and to provide the maximum authority to impose conditions that mitigate community concerns. The planning for the Park is a work in progress. The Draft SMP does not have adequate standards to address all the issues in a straight forward Substantial Development Permit process. The issues include too much intensity, noise, blocking of views, fire and safety access. Rather, the Conditional Use process should be used, and we are asking that the Implementation Principles be added to the SMP as part of the criteria to apply in that permit process. 34.2

On the personal side, I have lived in our waterfront home on Meydenbauer Bay for 23 years. I care about the Lake and I know my neighbors care about the Lake. Through MBNA, I obtained a five year permit from the State in 2010 to hire a biologist to eradicate the noxious milfoil plant. We did that to clean up the Lake

and ensure safe boating and swimming. The SMP should include provisions to support those efforts. 34.3

However, I do not support the staff proposed Draft SMP. The premise of the Draft SMP appears to be that my house is in the wrong place—that my house should be removed and that the Lake should be returned to conditions of 200 years ago. It is far too late for that. My house is clearly on the part of the shore created when the Lake level was lowered when the locks were constructed and Montlake Cut was opened 100 years ago. It is simply ridiculous to talk like going backwards 200 years is a reasonable solution, when it would mean flooding most of the lakefront homes. 34.4

Yet, that is the intention in the Draft SMP by making my house or my site nonconforming. Nonconforming status will reduce my property values and affect what I leave to my grandchildren. I read about the footprint exception, and maybe I don't want to expand my house right now or even in my lifetime, but that does not make it right. The footprint rule means that the City has determined that expanding my house is going to harm the Lake. That is simply not credible. I have a pool between my house and the Lake. If I remove the pool and expand my house, I am causing no harm. 34.5

I support the WSSA Sensible Plan and hope that the Planning Commission will adopt those recommendations to fix the problems in Staff's Draft SMP.

Thank you.

Marv Peterson

Meydenbauer Bay Neighbors Association

May 25, 2011

Hal Ferris
Chair, Bellevue Planning Commission
City of Bellevue
Post Office Box 90012
Bellevue, WA 98009

RE: Comments on Draft Shoreline Master Program

Dear Chair Ferris and Commissioners:

The Meydenbauer Bay Neighbors Association (MBNA) is a non-profit organization founded in the spring of 2007 whose Mission is to represent the Meydenbauer Bay Community which is made up of over 1300 families, 8 condominium associations, and the Meydenbauer Bay Yacht Club.

Background and Interests

MBNA was extensively involved in the public planning process of the Meydenbauer Bay Park—one of the City's large shoreline parks on Lake Washington. MBNA made it clear throughout the process that MBNA supports a Park, but was concerned that specific components could create too much intensity for the site. Meydenbauer Bay is a small, secluded Bay that will be acutely impacted by the noisy congestion and visual impacts created by an unplanned and oversized Park. After significant effort, the City Council agreed to adopt Implementation Principles as an integral part of the Park Master Plan, and those Principles ensure thorough review of the concerns expressed by the MBNA.

It should be noted that MBNA has been involved in other shoreline issues for Meydenbauer Bay that affect the shoreline property owners and everyone else that uses the Bay for recreation. Specifically, MBNA obtained a permit from the State Department of Ecology authorizing chemical treatment to eradicate the invasive milfoil plants. The permit was obtained in 2009 and is a five year permit. MBNA coordinates the hiring of a qualified biologist to make the treatments at selected sites according to the requirements of Ecology and the Washington Department of Fish and Wildlife. Milfoil fouls the water and is a danger to boats and swimmers alike. MBNA hopes to stay active in promoting safe boating and other issues of interest to its members.

MBNA's primary interest in making these comments on the Draft Shoreline Master Program (Draft SMP) is in relation to the Meydenbauer Bay Park. However, MBNA has other interests in shoreline issues including elimination of milfoil and other water quality improvements. Plus, many MBNA members live on the Lake and are directly affected by the regulations.

Background on Meydenbauer Bay Park and Shoreline Planning

Meydenbauer Bay Neighbors Association

MBNA wants to ensure that the Draft SMP limits the uses and development at the Meydenbauer Bay Park to that approved in the Park Master Plan including the Implementation Principles. In particular, the Preamble to the Implementation Principles states: 34.6

> Both the Steering Committee and Park Board acknowledged that there are points of contention that are not resolved to everyone's satisfaction. The Steering Committee and Park Board understood that, at this early planning stage, it's not realistic or maybe even advisable to specify precise solutions for every concern. The park will be developed in multiple phases over many years, possibly decades, and therefore needs to be flexible. Subsequent to the Steering Committee and Park Board Recommendation, the following Implementation Principles were developed to guide the implementation of the Meydenbauer Bay Park and Land Use Plan over many years and multiple phases.

Thus, it was clear that the Park Master Plan represents an "early planning stage" conceptual plan and did not "specify precise solutions" for many issues. Thus, the detailed Park plans will need to undergo substantially more design and public review prior to the approval of any buildable project. Additional neighborhood and community input and review is assured by Implementation Principle No. 6.

The City's SMP is an important planning tool in relation to the Park. The Park development will require a Shoreline permit, which after local review and approval, is either reviewed or approved by the State Department of Ecology. It is then potentially subject to review by the State Shorelines Hearings Board. Thus, the Shoreline permit process can be an avenue for formal public input into the Park Plan with defined procedures to ensure a fair and thorough review. 34.7

In addition, the Park project should be an integral part of the non-regulatory programs in the SMP. The Park will provide new public access opportunities for the public as the park expands from the City Marina to the current public beach area—one of the only locations in the City to provide new and expanded public access opportunities. Furthermore, the Park Plan includes a major shoreline restoration project that will provide major benefits to the City's shoreline, and should be recognized as a significant contributor to net improvements in City shoreline ecological functions. 34.8

Meydenbauer Bay Neighbors Association

With this background, MBNA's specific comments on the Draft SMP are provided below.

Sincerely,

MEYDENBAUER BAY NEIGHBORS ASSOCIATION

Marv Peterson

Marv Peterson
Immediate Past President

Meydenbauer Bay Neighbors Association

MBNA SPECIFIC COMMENTS ON THE DRAFT SMP

Environment Designations are established at Section 20.25E.010.D. Environment Designations are also called Shoreline Use Districts and act like zoning districts. The marina portion of the park is designated Recreational Boating, but the remainder of the park shoreline is designated Urban Conservancy.

Comment 1: The marina portion of the Park is designated "Recreational Boating." That designation is confusing because it does not mention marina at all, and can be confused with single family homes which also include recreational boating as a primary activity. The designation should be "City Marina," and the only land in the City with the "City Marina" designation should be the Meydenbauer Bay Park marina. That clarification would be very helpful to resolve the following concerns. **34.9**

Use Charts are established by Section 20.25E.030. The Use Charts must be reviewed for both the Urban Conservancy designation and Recreational Boating designation.

Comment 2: A general comment is that a provision is needed to clarify that each and every land use on the Park site must be established as permissible under the use charts. Put another way, a site with multiple uses must have each and every use authorized, and sites are not authorized to proceed with "secondary" or "accessory" uses even though the "primary" use is authorized. These Public Marina and City Park Uses are more like commercial projects where different uses could exist on site, and need to be separately authorized. MBNA's concern is, for example, that a Public Marina use does not include restaurants within the use as a Public Marina—a separate authorization would be needed, which MBNA would object to. **34.10**

The Recreation Chart includes City Park and Public Marina uses. As presented, "City Park" uses are authorized in the Urban Conservancy and "City Park" and "Public Marina" uses are authorized in the Recreational Boating area. Note (2) applies to both City Park use and Public Marina use, while Note (3) applies only to Public Marina use.

Comment 3: Notes (2) and (3) are confusing as written. It is unclear which of these provisions is intended to apply to the Meydenbauer Bay Park. The standard rule is that each site has only one primary use, so it is not clear whether the Park Plan is a City Park or a Public Marina, and the only Public Marina planned is at Meydenbauer Bay Park. The language of the Notes causes a difference in effect depending on the interpretation. In short, it is confusing and needs to be clarified. Staff suggested that both uses apply. If that is the intention, then a Note should be added to state that: "The Meydenbauer Bay Park shall be considered a City Park Use and a Public Marina Use. No other listed use or chart applies to the Meydenbauer Bay Park." **34.11**

Comment 4: Note (2) provides that uses identified in a Council-adopted Master Plan are "permitted uses" which then requires a Shoreline Substantial Development Permit **34.12**

Meydenbauer Bay Neighbors Association

based on the Key at the bottom of the page. Note (2) also provides that uses **not identified** in a Council-adopted Master Plan are "conditional uses" which require a Shoreline Conditional Use Permit. With respect to "City Park," only Note (2) applies. With respect to "Public Marinas," Note (2) is supplemented by Note (3). Note (3) states that a "Council-adopted Master Plan is required for the Meydenbauer Bay Park" and goes on to say that the Park is required to be "consistent with the terms of the Council-adopted Master Plan." Note (3) does not explain the meaning of P/C for the Public Marinas listing in the Chart. Thus, Note (3) appears to limit Public Marina uses to only those in the adopted Park Plan. But, the City Park uses are not so limited because only Note (2) is referenced. This confusion must be cleared up to ensure that the SMP provides that only uses approved in the Park Master Plan can occur at Meydenbauer Bay Park. The better approach supported by MBNA is that the applicable uses authorized or potentially authorized in the Park Master Plan should be listed outside the chart to ensure clarity and to provide clear regulation of those uses in the SMP.

Comment 5: The structure of Note (2) implies that public facilities "not identified in a Council-adopted Master Plan" may nevertheless be approved as long as the Shoreline Conditional Use process is followed. That is unacceptable for the Meydenbauer Bay Park, which should be restricted to only those uses already authorized in Park Master Plan. Note (3) may limit those uses for Public Marinas, but not for City Park, and since it is unclear how a Park phase may be styled, this confusing approach is unacceptable. **34.13**

Comment 6: Note (2) appears to allow City Park and Public Marina uses at the Meydenbauer Bay Park to be Permitted Uses subject to the reduced scrutiny of a Shoreline Substantial Development Permit (SDP). Regardless of whether the uses are limited to the adopted Park Plan, this procedural approach is entirely inappropriate. The SDP process is only appropriate for specific uses that can have all issues addressed through clear regulations. The process is not for other projects that should require more comprehensive review with the opportunity for the imposition of wide ranging conditions. Shoreline Condition Use permits applies to the latter situation and must be applied to the Meydenbauer Bay Park. The City Council adopted Implementation Principles for the Park explains in the Preamble that: "The Steering Committee and Park Board understood that, at this early planning stage, it's not realistic or maybe even advisable to specify precise solutions for every concern." The Implementation Principles set forth that numerous issues must be considered and addressed at the project level, in particular on the following topics: appropriate pedestrian and vehicle access (if any) on 100th Avenue, community building, marina, and viewing overlook. The Park Master Plan does not contain specific details to govern the project level review, and the only approval is a concept Plan. Therefore, it is imperative that the Shoreline Conditional Use permit process be required for the Meydenbauer Bay Park. The Shoreline Conditional Use permit process would ensure the full authority to impose whatever conditions are necessary to protect the neighborhood. Thus, the Note for the Meydenbauer Bay Park should also state that: "Development at the Meydenbauer Bay Park shall be processed according to the Shoreline Conditional Use permit process. In **34.14**

Meydenbauer Bay Neighbors Association

addition to other Conditional Use review criteria, development at the Meydenbauer Bay Park shall also be considered according to the criteria in the Park Master Plan Implementation Principles Nos. 1-6 as follows." The Implementation Principles should then be listed in full.

The following Comments 7-13, relate to the Use Charts and can be addressed if the above changes are properly made and by adding a properly styled global restriction or Note to the Use Charts that specifies the only uses at the Meydenbauer Bay Park shall be those as defined in the Recreation Chart and notes thereto.

Comment 7: The Residential Chart contains no restriction that Meydenbauer Bay Park is limited to the approved Park Plan uses. As presented, single family and multifamily homes can be developed in the Urban Conservancy, and single family homes can be constructed in the Recreational Boating. These uses are not part of the approved Park Plan. The above corrections are needed to clarify this issue. **34.15**

Comment 8: The Transportation and Utilities Chart contains no restriction that Meydenbauer Bay Park is limited to the approved Park Plan uses. As presented, railroads, Park and Ride facilities, and potentially other inappropriate uses could be developed in the Urban Conservancy. As presented, commercial float plane/ferry terminal, railroads, Park and Ride facilities, and potentially other inappropriate uses could be developed in the Recreational Boating area. These uses are not part of the approved Park Plan. The above corrections are needed to clarify this issue. **34.16**

Comment 9: The Wholesale and Retail Chart contains no clear restriction that Meydenbauer Bay Park is limited to the approved Park Plan uses. Note (2) is unclear. It states that these uses "may be permitted" as part of the shoreline process for a "legally established city park." If that is intended as a restriction, it is confusing and could be misconstrued as allowing these uses after the Park is opened. As presented, restaurants, other food establishments, and broadly referenced "commercial, wholesale, retail" could be developed in the Urban Conservancy. As presented, restaurants, other food establishments, and broadly referenced "commercial, wholesale, retail", plus retail boat sales, and fuel docks could all be developed in the Recreational Boating area. Except for the limited potential of vender kiosks, these uses are not part of the approved Park Plan. The above corrections are needed to clarify this issue. **34.17**

Comment 10: The Services Chart contains no clear restriction that Meydenbauer Bay Park is limited to the approved Park Plan uses. Notes 1-3 are unclear. Note (1) states that these uses "may be approved" as part of the shoreline process as an "accessory" to a city park. Note (2) applies where the situation is not accessory to a city park. Note (3) refers to administrative offices. If those are intended as a restriction, they are confusing and could be misconstrued as allowing these uses after the Park is opened. As presented, an education or interpretive center and church could be developed in the Urban Conservancy. As presented, an education or interpretive center, church, and **34.18**

Meydenbauer Bay Neighbors Association

administrative offices could be developed in the Recreational Boating area. Except maybe for a marina office, these uses are not part of the approved Park Plan. The above corrections are needed to clarify this issue.

Comment 11: The Recreation Chart contains confusing provisions that may be intended to restrict uses of Meydenbauer Bay Park to the approved uses, but more clarification is needed. The Recreation Chart includes private marinas, yacht clubs, and community clubs, and as presented those uses could be developed in the Recreational Boating area, subject to Note (4). Note (4) contains no restriction that Meydenbauer Bay Park is limited to the approved Park Plan uses. The above corrections are needed to clarify this issue. **34.19**

Comment 12: Also in the Recreation Chart, as presented, boat moorage, boat storage (cradle/trailer and dry stacked), boat launch ramps (motorized and non-motorized) could be developed in the Urban Conservancy and in the Recreational Boating area. Note (1) states that these uses "require approval" through the shoreline process as an "accessory" to a "lawfully established use," but otherwise Note (1) contains no clear restriction that Meydenbauer Bay Park is limited to the approved Park Plan uses. Only non-motorized boat launching, namely kayaks and canoes, and boat moorage were in the approved Park Plan, but not boat storage or motorized launching ramps. The above corrections are needed to clarify this issue. **34.20**

Comment 13: The Resources Chart contains no clear restriction that Meydenbauer Bay Park is limited to the approved uses. As presented, a commercial nursery could be developed in the Urban Conservancy. This use is not part of the approved Park Plan. The above corrections are needed to clarify this issue. **34.21**

Section 20.25E.060.I: General Requirements—Public Access, 4. Performance Standards

The Meydenbauer Bay Park will have public access as required by the Shoreline Management Act in establishing a policy to promote public access on public property.

Comment 14: Provision 4.g. appears to be intended to implement the Park Plan by referring to "city park plans" that "specify public access locations and improvements that differ" from this provision 4, and that in those situations the Council-approved Master Plan shall control. The attempt is there, but it is not clear what would be considered either "specific public access locations" or "different." The Park Master Plan contains potential public access, but at least two of those features were disputed and the entire concept needs to be designed in detail, consistent with the additional review demanded by the Implementation Principles. The two disputed features, the overlook (Sky Bridge) and the overwater boardwalk, could be addressed by these provisions. These provisions are a bit complicated to know precisely how they might be implemented or **34.22**

Meydenbauer Bay Neighbors Association

applied in future project decisions. However, regulations here should not and cannot be used as leverage points that allow the City to demand certain features in the Park that are otherwise objectionable according to the Implementation Principles, environmental impacts (including impacts on private views), and other factors. The future Meydenbauer Bay Park implementation process needs to be a Shoreline Conditional Use permit process to ensure the full authority to impose whatever conditions are necessary to protect the neighborhood. Provision 4.g. should add a qualification that prohibits anything in this Section from altering the full and complete process needed to determine the locations of public access and public viewing at Meydenbauer Bay Park.

Comment 15: With these points in mind, the General provision that states that public access "shall be located as close as possible horizontally and vertically to the shoreline's edge as feasible," could be improperly used to countermand the overlook Implementation Principle No 4. An overlook location closest to the water "horizontally" and "vertically" could be interpreted to mean putting the sky bridge as originally proposed in the precise location that was objected to by MBNA as an eyesore that blocks views of the water. The provision references adverse impacts on ecological resources, but does not require any consideration of other environmental impacts such as impacts on views which has always been a consideration under Shoreline Management Act. 34.23

Comment 16: Part 6 needs to be clarified to ensure that its provisions do not override the Meydenbauer Bay Park permit or planning process. This provision could be misread to support putting the Sky Bridge back from the water's edge with a "viewing tower" to ensure "unobstructed views" whether or not the viewing platform blocked the view of neighboring properties. This type of provision is classic micromanagement in which the Code tries to force certain outcomes without any relationship or consideration of balancing that outcome with other impacts or competing policies. 34.24

Comment 17: Part 4.f. applying standards for "Overwater Structures" would apply to the floating walkway. Again, the provision is too complicated and should not be used as leverage to impose this requirement on the Park just because the Master Plan does not specifically "differ" with this provision. There are serious questions whether the city marina should be, or can be, retrofitted to provide public access on the marina proper. MBNA generally supported the curved pier as an appropriate public access location. But, the floating walkway concept was a very expensive option with unresolved operational and safety issues, and further was basically duplicative of the promenade just upland. This provision requires moorage facilities to provide public access "at or near the end of the structure" but also recognizes security concerns that make that problematic. 34.25

The following comments apply to Section 20.25E.070.C, Specific Use Regulations—Recreation:

Meydenbauer Bay Neighbors Association

Comment 18: Provision 2.b states that Routine Maintenance and Repair includes Minor Expansion of up to a 20% increase and appears to even allow that for overwater coverage. This provision needs to clarify that it does not apply to the Meydenbauer Bay Park which should follow the Conditional Use process which would result in a binding site plan subject to strict amendment provisions. **34.26**

Comment 19: Provision 2.d.ii. states exceptions to strict rule of i. References are made to 20.25E.080, but that is a mistake. The references are supposed to be to 20.25E.070—the same section. Staff was alerted to this and may have already made the correction. **34.27**

Comment 20: Provision 3.b, New or Expanded Recreational Facilities, Decision Criteria. The decision criteria are incomplete under a shoreline substantial development process, but if allowed to be supplemented, the criteria are okay under the shoreline conditional use permit process. **34.28**

Comment 21: Provision 3.c, Design Criteria. Provides various specific criteria for design and siting; minimum necessary to fulfill intended function, compatible fit with existing residential facility, and six other design review board type criteria. The criteria are very detailed, but are subjective and thus are result in uncertain outcomes in the shoreline substantial development process. With a shoreline conditional use permit process, at least the process would be open to comments and discussion, and conditions to mitigate concerns. **34.29**

Comment 22: Provision 3.g, Overwater Structures, allows overwater structures that are for a water dependent use and for non-water dependent use if "appurtenant to and necessary to support water dependent uses, such as fueling docks, restrooms, and boating-related retail services." The structure shall be minimum size necessary for intended function. The provision is vague and confusing, and must be clarified not to expand the Meydenbauer Bay Park Master Plan. "Appurtenant to" and "necessary to support" are not defined and could be misused to bring in uses not otherwise allowed and/or bring in more structures overwater. New overwater structures are not encouraged in the WAC Shoreline Guidelines. **34.30**

Comment 23: Provision 3.h, Shoreline Promenades, in the purpose statement states essentially that the definition is a "continuous waterfront walkway." The last sentence of the Purpose states that a promenade can only be developed with a "Council-adopted master plan on public property." It appears that this refers to the landward walkway, and not the overwater walkway of the Meydenbauer Bay Park Plan. The inferences from "waterfront" and not overwater, and the statement that it may accommodate emergency vehicles indicate this point. But, the provision should simply state that it applies to locations landward of OHWM, and not waterward. **34.31**

Meydenbauer Bay Neighbors Association

Section 20.25E.180: Shoreline Conditional Use Permit

Part C, Purpose, states: "A shoreline conditional use permit is a mechanism by which the City may both provide more control and allow greater flexibility in administering the shoreline master program in a manner consistent with the policies of the SMA. The City may permit certain uses to be established or may require special conditions on development or on the use of land to insure that designated uses or activities are compatible with other uses in the same land use district and in the vicinity of the subject property."

Comment 24: This purpose provision for Shoreline Conditional Use Permit precisely fits what is intended and needed for the processing of the Meydenbauer Bay Park according to the Implementation Principles. 34.32

Comment 25: Part D, Decision Criteria, should include demonstrating no net loss of shoreline ecological functions. 34.33

Turning back to the Section 20.25E.050, Dimensional Requirements.

Comment 26: The chart of dimensional requirements should not be seen as guaranteed maximums for the Meydenbauer Bay Park. Otherwise, the dimensional requirements could be used to improperly trump other considerations. Notes should be added to that effect. 34.34

Forward to Section 20.25E.060.D. Mitigation.

Comment 27: Provision 5.g. is applicable to City Parks, and allows for off-site mitigation using a Shoreline Special Report. The Shoreline Special Report is not a substitute for a full SEPA process and a full Shoreline Conditional Use process. A Shoreline Special Report has no process inherently attached to it. Otherwise, the Meydenbauer Bay Park Master Plan specifically designates on-site mitigation, so this provision should not alter that requirement. 34.35

Forward to Section 20.25E.070.D, Transportation

Comment 28: Part 3 should be clarified to not override the Meydenbauer Bay Park Plan, and in particular, the following uses should not be allowed in Meydenbauer Bay: bridges (f.), commercial float plane terminals (h.), and ferry terminals (i.). 34.36

Forward to Section 20.25E.080.E, Non-Residential Moorage Etc.

Comment 29: At 4.c. and 4.d., the following are not approved for the Meydenbauer Bay Park and this section should be clarified accordingly: mooring buoys, liveaboards, stacked boat storage, aircraft moorage, and pump outs. Pump outs create special 34.37

Meydenbauer Bay Neighbors Association

concerns and require additional consideration of boat traffic and spill concerns, since Meydenbauer Bay is uniquely narrow and confined.

Comment 30: At 4.e. and 4.g., motorized boat ramps are not approved for the Meydenbauer Bay Park and this section should be clarified accordingly. **34.38**

Comment 31: The SMP should make it clear that eradicating milfoil is an important activity. The SMP should make it clear that milfoil reduction is supporting and allowed. The SMP should include a strong statement supporting private efforts to eradicate milfoil, but more importantly the SMP should adopt a strong policy supporting City efforts to eradicate milfoil and should include milfoil eradication as a required ongoing program in the SMP Restoration Plan. **34.39**

Comment 32: A quick look at the SMP Restoration Plan finds a list of restoration projects on public property including City parks at Chapter 9. But, the Meydenbauer Bay Park is not one of them. The Meydenbauer Bay Park includes a significant restoration plan to daylight a stream and return hundreds of feet of bulkhead to more natural conditions using soft stabilization methods. This restoration project should be included in the SMP Restoration Plan. In addition, restoration projects like the Meydenbauer Bay Park project need to be recognized as beneficial improvements to shoreline ecological conditions. These beneficial improvements can offset other areas where some degrading of conditions would reasonably be expected, and ensure an overall positive impacts on the health of the shoreline. **34.40**

Marv Peterson,	he is the immediate past president of the Meydenbauer Bay Neighbors Association (MBNA), which represents over 1300 families, eight condominiums, and the Meydenbauer Bay Yacht Club. He provided the Commission with formal written comments on the draft Shoreline Master Program and noted the MBNA primary interest is with the Meydenbauer Bay Park. Following significant effort by the MBNA, the City Council agreed to adopt implementation principles as an integral part of the Meydenbauer Bay Park master plan. Those principles ensure thorough review of the concerns expressed by the MBNA. The MBNA wants to ensure that the draft Shoreline Master Program limits, the uses and development of the Meydenbauer Bay Park, will conform to what was approved in the master park plan, including the implementation principles attached to the written comments. The staff have indicated agreement with that approach in general, and the comments address changes that would make the intention clearer. The MBNA believes that the Meydenbauer Bay Park should be processed as a shoreline conditional use to ensure greater public participation, and to provide the maximum authority to impose conditions that will mitigate community concerns. The draft Shoreline Master Program does not have adequate standards to address all of the issues in a straightforward substantial development permit process. The issues include intensity, noise, blocking of views, and fire and safety access. The implementation principles should be added to the Shoreline Master Program as part of the criteria to be applied during the permit process. The MBNA supports efforts that will help to clean up the lake; to that end it obtained a five-year permit from the state to hire a biologist to help eradicate the noxious milfoil plant. The Shoreline Master Program should include provisions to support such efforts. The premise of the draft Shoreline Master Program, however, appears to be that houses along the shoreline are in the wrong place, that they should be removed, and that all shorelines should be returned to the condition they were in 200 years ago. To do so would result in the flooding of most lakefront homes in that the Montlake cut would need to be filled in. The footprint rule in the draft is a clear indication that the city has determined expanding any current home will harm the lake; that stance is simply not credible. The Washington Sensible Shorelines Association plan should be supported by the Commission.	**34.41** **34.42** **34.43** **34.44** **34.45**

Bellevue Planning Commission

May 25, 2011

This package is an attempt to summarize the major areas of Bellevue's Shoreline Management Program proposed regulations, as affects residential properties. The intent is to assist Commissioners to better understand what the regulations say, and what they mean to shoreline owners.

I personally found that even having read the code several times, some elements were not clear to me until I produced this document. My hope is that it can assist Commissioners in the same way.

This is by no means an attempt at comprehensive Code Comments, which will come from WSSA officially - that said, it does include commentary intended to be part of the public record, as part of the SMP Public Hearing.

The format is pretty simple. Each tab addresses a different element, the tabs are:

1) Existing Residential – Exempt Actions
2) Existing Residential – Expansion Options
3) New Residential
4) Newport Shores
5) Existing Shoreline Stabilization
6) New Shoreline Stabilization
7) Existing Docks
8) Existing Docks/Replacement & New Docks
9) Ordinary High Water Mark
10) Phantom Lake

Not all tabs contain summary comments.

You will notice, each section begins with renderings from the SMP Open House (the Display Panels), with WSSA comments inserted. Comments are intended to either: 1) provide a greater understanding of rendering elements, or 2) to provide an understanding of information missing/not stated on the rendering.

You will note that "VCA" is used frequently for "Vegetation Conservation Area", and that "CAO", of course refers to "Critical Area Ordinance".

Also please note, that the applicable proposed code is referenced at the Heading of each section, and corresponding pages numbers are referenced. The intent is to allow commissioners to easily refer directly to the staff-produced code. In addition, a few provisions apply to more than one section and so are labeled "Applies to ALL Residential (or docks, or whatever)" – so you can read those sections once and not read for each tab.

Thank you for your attention and I do hope this helps you process the SMP with greater ease.

Sincerely,
Anita Skoog Neil
9302 SE Shoreland Dr.

SMP – Rational Decision Making & Nonconformity - Nov. 3, 2010

Anita Skoog Neil

When this SMP started, I said to WSSA - this is not about science, it's about land use. Since then, we've spent a lot of time on the science, presumably because the WAC requires it – but now I realize, we've spent a lot of time on it, because it underpins the perception that there's a reason for the proposed regulations. As one commissioner declared last meeting, "I've come to accept the science is indefinable".

So – setting aside the science, what do we have left to guide our decision-making?

Last meeting, the Commission was directed to make policy decisions based on a subjective social/political orientation - not base on rational thinking, not based on cause-and-effect - but based on a particular moral argument of precaution.

The Precautionary Principal espouses the belief that under conditions of substantial scientific uncertainty, environmental regulations should err on the side of caution in order to prevent harm. It moves the ... burden of decision-making from scientists to policy makers, and advises local governments to take action, even in the absence of evidence of harm - and notwithstanding the costs.

The difficulty with this thinking, of course, is that all of life involves risk. What we are left with is a "standard-less" strategy. How many times have we all asked staff, what is No Net Loss and how is it measured? This strategy does not establish what we should take precaution to protect.

We've been told the WAC requires it, or some variation of this. We must keep in mind that all law is subject to interpretation – after all, that's why we have lawyers and the courts.

So back to these darn regulations and the fact the Commission needs to address them.

If we are to not rely on the science, then a rational person might assume we must rely on reason. That would mean that government should show the cause-&-effect relationship - between the proposed solution to the identified problem, that is roughly proportional to that part of the problem – and, that is created or exacerbated by the landowner's development.

The Washington State Court of Appeals has said, a condition on development must "mitigate a direct impact that has been identified as a consequence of a proposed development" (Cobb*). And, under RCW 82.02.020 – the burden rests on the government to prove that essential nexus, or rough proportionality, has been satisfied, or else the development condition constitutes an illegal tax, fee, or charge.

So – tonight's agenda –it's the focal point of the whole SMP process – the creation Regulatory Non-conformity!

It's significant that it's a non-legislative anomaly, as this means jurisdictions/agencies have used the courts to influence non-conforming land use codes without due legislative process. Tonight's agenda says: "The SMA does not specifically address nonconforming uses", so "Ecology adopted (default) rules (that) apply only if a jurisdiction... doesn't address nonconforming uses."

It's also noteworthy that the Commission has not actually accepted the proposed 50 ft setback, because changing the setback is the key to creating a regulatory framework for the proposed non-conformity.

And - the Setback Reduction Options Matrix? – it's a smoke screen to make you feel that the residents have not been damaged "too badly" – after all, they have "Choices/Options".

Under the Options Matrix, in order to "buy back" the pre-existing 25 ft setback, an owner would have to remove 75% of their bulkhead. This is "the best" option available and amounts to extortion, for owners to "buy" something they already own! No rational homeowner would remove the majority of their bulkhead to move 25 ft closer to an unprotected, "soon to erode" shoreline. The Options Matrix has not been designed to allow flexibility at all, but to dis-incentivize an owner from deviating from the new proposed 50 ft setback.

And – what of pre-determined social/political-driven outcomes?

Tonight's agenda says: "...continuation of ...nonconforming uses can interfere with... ability to **achieve new policy**...(and that) property improvement... (must be allowed)... in the **early years of policy implementation**"... (that) the "purpose of the shoreline setback is to **phase out residential use** (in) the setback area".**

What's next – the full 200 ft Shoreline Jurisdiction?

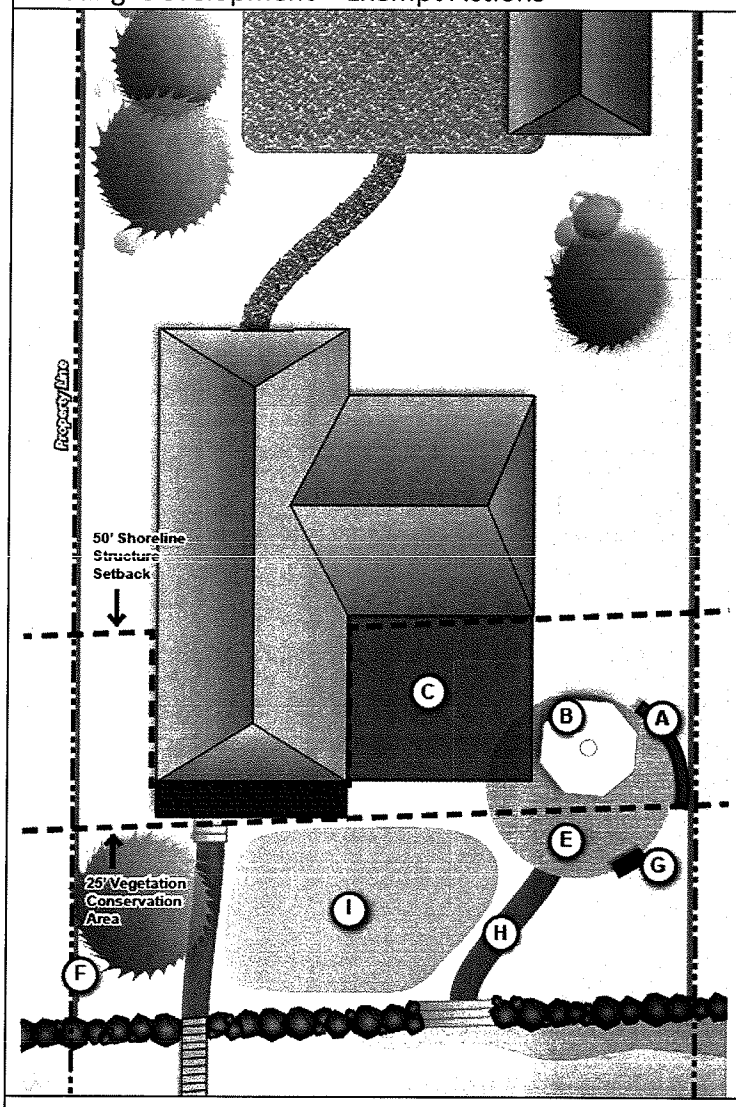
This is NOT about science or the environment; this is about significant social/political policy shift.

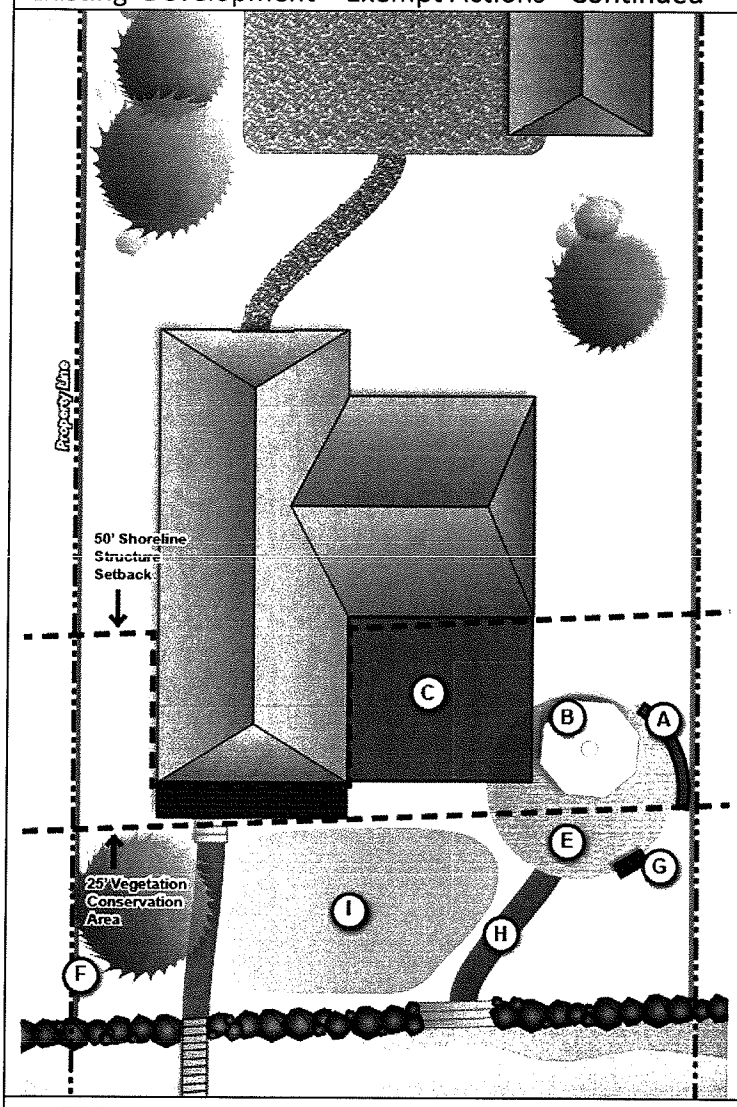
Rational regulations are possible. It's quite simple - if it doesn't make logical sense, don't do it.

There is an expression: Your property and your money are only yours until the government finds higher and better use for it....

*Cobb,64 Wash. Appeal. at 467-68

** See Pg 5 & 7 – COB staff memo – Nov.3, 2010

City Display Existing Development – Exempt Actions	WSSA Critique	
	Although staff recommends "carving out" existing homes that are 25 to 50 ft from water's edge, the increase in setback to 50 ft (from 25 ft established 1974) will increase to 40% the number of properties being "regulated". Yet, there has been no justification for doing the increase. Many affected structures will be declared non-conforming. Non-conformance carries with it serious consequences. When combined, these factors point to increased restrictions, increased costs, and diminishing value of shoreline properties. Add in the City's goal of acquiring 20% of the shore for public use, and conflict of interest comes to mind. WSSA is also concerned with the intent to carve out 60% of the shore for conservation buffers restricted to native plants with permits/bonds required to maintain them.	35.1 35.2 35.3
Add these to your property: **(A) Retaining wall < 30" high** **(B) 200 s.f. accessory structure** **(C) 500 s.f. addition** **(D) Impervious surface up to 25% of setback (not to exceed 1000 sq. ft.)** **(E) New pervious hardscape up to 40% of the Vegetation Conservation Area** **(F) Fence** **(G) Barbeque or fire pit** **(H) Landscape features such as fountains, statues, and stairs** **(I) Landscaping including lawn** CONTINUED BELOW	A – Retaining walls closer to shore will be subject to regulation. B – Code states accessory structure changes require onerous setback reduction options. C – Additions must be <u>lateral</u> and require a setback reduction option D – Impervious surface includes dwelling expansion. Over 1000 s.f. triggers additional regulations. E – 40%'s arbitrary. Engineering & bond required to assure 'pervious'. F – Fences allowed only to 25 ft from shoreline; thus are useless.	35.4 35.5 35.6 35.7 35.8 35.9

City Display Existing Development – Exempt Actions - Continued	WSSA Critique
	Comments are the same as on the previous display.
Example Maintenance Activities • **Add landscaping and remove existing ornamental shrubs or groundcover** • **Maintain lawn by mowing, sod replacement and other natural lawncare practices** • **Install lawn in area of existing landscaping** • **Update your plumbing or electrical systems** • **Paint existing structures**	Routine maintenance is allowed if: (1) consistently carried out, (2) ornamentals predominate over native/invasive species, (3) hand tools and hand labor are used. Mowing is OK. HOWEVER! If repair will exceed 50% of the replacement value, entire property must comply with SMP regulations (i.e., new development standards will apply).
Don't miss this! **Footprint exception: even when a structure is located within the shoreline structure setback, but outside the Vegetation Conservation Area, it can be rebuilt in the same footprint without triggering additional requirements.** CONTINUED BELOW	The phrase not included here is "legally established". If one cannot document the structure was legally established since the early 1970's, it cannot be replaced.

TOP PAGE

The Rest of the Story - What's NOT On...
Existing Residential – Exempt - Display Board:

(Page numbers referenced – per LUC 20.25E.065)

New 50 ft setback is not required by SMP law.

- Staff admits was selected arbitrarily & they cannot provide ecological justification. **35.10**

Over 500 structures will now be nonconforming - Ref: Setbacks & Critical Area Analysis. **35.11**

If primary residence encroaches into new 50 ft setback, the footprint is exempt (if not expanded) from new setback – other structures not given this benefit – all structures that encroach into new setback are now nonconforming - means don't meet current code. pg.8

Items represented on Display Board as exempt -
(meaning, can be "added w/out triggering regulations") - do NOT include: - pg 9 **35.12**

- Fences – are not allowed in VCA (Veg.Cons.Area) –pg 10
- New pervious hardscape up to 40% of VCA – must hire engineer & is at Staff discretion – Staff may require costly bond to ensure "pervious"-ness over time. pg.8
- 500 sf addition – will trigger VCA regulations, 500 sf must be lateral and 500 sf expansion is limited to lifetime of structure. – pg.9
- 200 sf accessory structure – will trigger VCA regulations and 200 sf limit is on total structure, even if mostly outside new setback. – pg 9
- Landscaping including lawn – provided not more than 40% of VCA. Pg 18

Items not represented on Display Board that cannot be done "w/out triggering regulations": pg 17 **35.13**

- Maintenance of fences & rockeries under 30 inches – it appears the following cannot in reality be maintained if they're in the VCA, because to do so "the maintenance or repair must comply with" regulations of the VCA.
  - the VCA doesn't allow fences, swimming pools, sport courts, accessory structures & other non-water uses in the VCA.

More importantly one must select a "Setback Reduction Option". – to expand 500 sf or do a 200 sf accessory structure into the new 50 ft setback. pg.10

- This is a menu of penalties, not incentives – and is addressed in "Existing Residential-Expansion Options" Display Board Comments. **35.14**

VCA (Vegetation Conservation Area) – (Same applies for ALL Residential): pg 16-20 **35.15**

- VCA is first 25 ft from shoreline
- No more than 40% of VCA may be developed w/: lawn, pervious patios, paths, walkways, steps.
- Improvements must be: consolidated, contiguous, & as far from shoreline as possible.
- When new improvements are installed, owner must plant equal area of veg., w/ 100 sf min.
- Routine veg. maintenance is allowed provided:
  - Activities consistently carried out
  - Ornamental veg. predominates over native or invasive veg.

- Hand labor & hand-operated equipment is used for pruning – lawn mowing is OK.

- Prohibited improvements: fences, swimming pools, sport courts, accessory structures, other non-water uses.
- Tree/Native veg. retention required.
- Hazardous Trees: **35.16**
  - Owner must hire professional to certify as hazardous
  - If critical habitat, like eagle's nest, must hire wildlife biologist
  - If removed should leave as wildlife snags & must be replaced in 3:1 ratio, per Handbook not yet created – & as "now or hereafter amended"
  - If imminent threat, may remove Haz. tree provided notify city w/in 14 days, get permit, submit & do restoration plan (replanting)
  - Tree cutting limited to pruning, crown thinning – with hand labor – or get a permit - pruning is per guidelines established by Director/Staff
  - Cut veg. may be left in VCA unless fire hazard or pest issue for other veg.
- Existing native trees/shrubs/groundcover is accepted toward VCA if:
  - Not part of previously mandated mitigation
  - Provided veg. provides equal "ecological function" as required veg.

  Reality - Ridiculous arbitrary regulation.
- Native veg. removed must be replaced in 1:1 ratio
- Removal of noxious veg. allowed: if replanted w/ native/native-compatible veg. – preferred removal method – by hand.

Nonconforming Residential – (Same applies for ALL EXISTING Residential): pg 29-33 **35.17**

- Owners must provide documentation that proves that their residential improvements were "legally established" prior to any work requiring permit (almost all work requires permit) - meaning must prove:
  - was permitted when built
  - has been maintained over time.
    - Documentation of "permitted" can include: permits, land use/zoning codes at time of construction
    - Documentation of maintenance can include: dated title reports, dated RE appraisals, dated photos

35.18

- Routine Maintenance/Repair are allowed provided they don't exceed arbitrary "50% of replacement value" threshold.
  - "50% threshold" is based on all improvements made w/ in three year period - entire project, not individual permits, as determined by director/staff.
  - Exempt for "50% threshold are: fire prevention measures, ADA measures, seismic retrofit, stormwater improvements, LEED measures, and "routine maintenance" (painting, caulking, washing, rewiring)
    - **Note: SMP law says "replacement is form of repair" – so WSSA disagrees that "repair thresholds" apply to replacement or repair of improvements.**

- Accidental Destruction – when "legally established" residential development is damaged/destroyed by fire/explosion/natural disaster/other unforeseen circumstances "outside control of owner", development may be repaired/reconstructed w/following limitations:

- Note: "outside control of owner" should be deleted as give staff discretionary judgment loophole.
  - Repair/Rebuilt w/in existing footprint OR move to "less sensitive portion of site" – if move, must meet all SMP regulations including CAO & VCA.
  - Repair/rebuilt w/in one year of destruction – Reality: timing to get working drawings, bids, permits, weather constraints makes one year improbable/impractical.
  - May not expand, enlarge or otherwise increase nonconformity – Reality: SMP law specifically allows "enlarge or expand...provided...enlargement...not increase extend of nonconformity by ...extending into areas where construction/use would not be allowed..."
  - Temporary disturbance is subject to mitigation plan – means costly report/replanting plan & likely 5+yr bond – Reality: how about "re-establish existing vegetation."

- Loss of "Allowed" Nonconforming Status – if: **35.19**
  1) Development is abandoned for 12 mos. w/ intension of abandoning OR
  2) Discontinuance of use for 12 mos is "prima facie evidence of intension to abandon"
     - Reality: Arbitrary, & property rights issue – the right to sell ones' property.
       - In a "down" real estate market, as we have now, a structure or use could theoretically be "abandoned" for 2-3 or more years – especially in event of an estate selling an asset, a structure/use could be empty of furniture/etc and not rented while marketing efforts take place.
       - Additionally, "higher-end" marketing efforts tend to take longer & may not include physical occupation during that timeframe.

- Permits - unless exempt under "Shoreline Substantial Development Permit" requirements, all maintenance/repair/alteration/replacement under this section shall require permits **36.20**
  - Note: "Unless exempt", only city-wide permit polices should apply.

- Nonconforming w/in new 50 ft setback (not in VCA):
  1) Primary structure gets "footprint exception" & above "50% threshold" doesn't apply for "non-expansions". "Accidental destruction" provision still applies.
  2) Accessory structures >200 sf – maintenance/repair is allowed but improvements exceeding "50% threshold" must conform to "Setback Reduction Menu Options" or Special Shoreline Report. "Accidental destruction" still applies. Note:
     a) "50% threshold" not justifiable under SMP law;
     b) "Setback Reduction Options Menu" is arbitrary, infeasible, unsubstantiated by appropriate/balanced science, and a violation of property rights
        - plus, a demand for recorded documents against property, along w/ demand for agreement to not sue for subsequently resulting damages the owner is likely to incur.

- Nonconforming w/in VCA (Veg. Conservation Area):
  1) Primary structure
     - Maintenance/repair allowed up to "50% threshold" – if improvements exceed "50% threshold" must remove portion of structure that is w/in VCA. Once removed, must do mitigation/restoration.
     - If removal/relocation of structure portion is infeasible due to site constraints "not created by owner", must get shoreline variance.
       Reality:

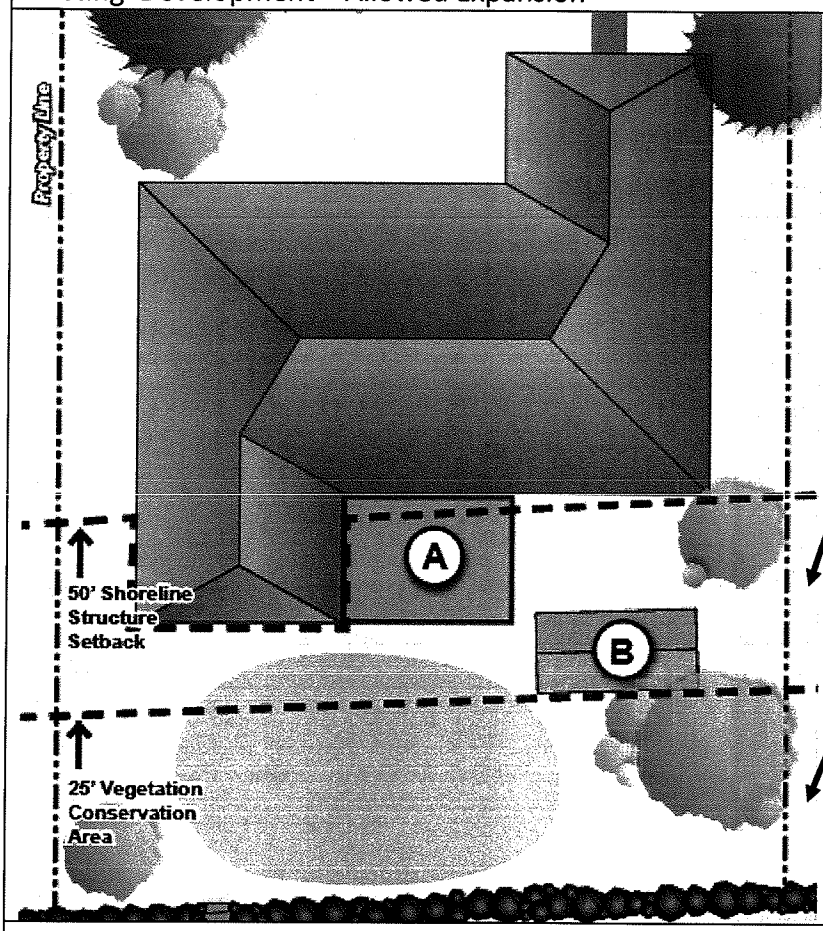
- "50% threshold" not justifiable under SMP law; provided an owner has not intruded into the VCA, this is purely a regulation to force abandonment over time
- iif an owner cannot really maintain/repair, their structure will fall into decay.
- Violates property rights & right to keep one's property in a saleable condition.
- A variance is unlikely to be granted by DOE, who is in favor of strict SMP regulations, so that is not viable option.

2) Accessory Structures – exactly same as above.

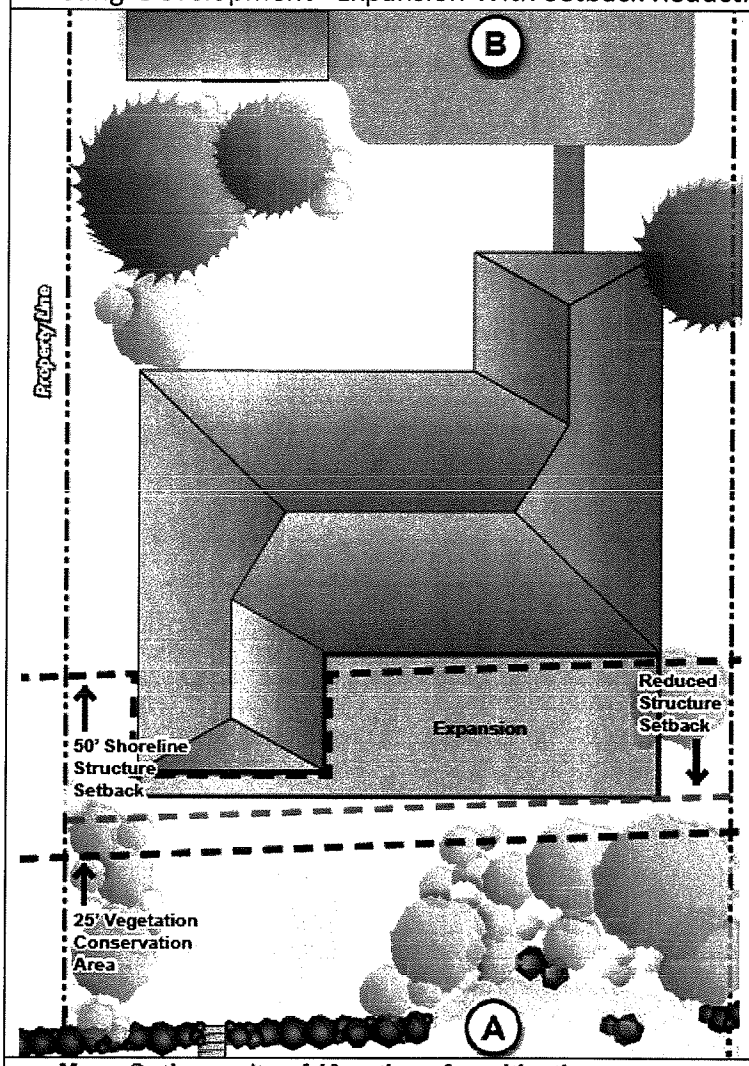
35.21

- Nonconforming Overwater Accessory Structures (Boathouses, etc.):
  Maintenance/repair is permitted – if exceeds "50% threshold", is deemed new construction & is not allowed.

- Nonconforming moorage & shoreline stabilization – both are allowed w/ severe restrictions/regulations – dealt w/ under "docks" and "shoreline stabilization"/bulkheads.

City Display	WSSA Critique	
Existing Development – Allowed Expansion		
	**Building Setback** - Since 1974 properties have been developed using a total setback of 25 ft. No scientifically established reason has been provided to extend that value by adding a 25 ft. restricted activity area. **VCA** – or Vegetation Conservation Areas were previously termed "buffers" and would now take an additional 25 ft. and carry special restrictions. Note - this may carry long term implications under tightened State regulations - such as more deed restrictions, more maintenance, or other restriction of property rights. WSSA opposes buffers under any pseudonym. They have not been justified. The existing 25 ft setback should be retained.	35.22 35.23
(A) 500 s.f. expansion into structure setback, parallel to existing building line (B) 200 s.f. of accessory structures » City-wide tree preservation standard » Retain existing native vegetation in Vegetation Conservation Area » No additional mitigation	No rationale has been provided for these thresholds. NOTE: the activity MUST be beyond the 25 ft. Conservation Area. They cannot be placed within the first 25 ft.	35.24
Don't miss this! **Additional allowances within shoreline setback for hardscape, landscape features and minor building elements like decks and bay windows.** CONTINUED BELOW		

TOP PAGE

City Display	WSSA Critique	
Existing Development –Expansion With Setback Reduction		
	To modify a parcel and move closer to the water, City staff offers 10 unrealistic options to do so. They raise practical questions - Would one willingly remove ones' bulkhead to move closer to an unprotected shoreline? Would opening a "piped" stream have it declared potential salmon habitat (i.e., a critical area)? How practical is converting 1000 s.f. of driveway to pervious surface? How reasonable is it to require dedication (on ones title) an additional 20% of the parcel as a native vegetation preserve? Would anyone be willing to sign a release of City liability AND record these restrictions and maintenance obligations in perpetuity on their property title?	35.25
• **Menu Option: suite of 10 options for mitigation** Ⓐ **Option 2: Use of natural or soft stabilized shoreline for >15'** Ⓑ **Option 5: Use of >1000 s.f. of pervious material in parking and driveways** • **Special Shorelines Report for alternative mitigation** • **Additional standards** » **City-wide tree preservation standard** » **Retain existing native vegetation in Vegetation Conservation Area** » **Proportional landscaping standard**	Attendees found that the Open House "options" minimized the onerous regulatory requirements. Each of the items shown is overly simplified here. Much stricter rules, controlling plants and trees on the entire parcel, are proposed; including required use of hand tools and hand labor.	35.26
Don't miss this! **When a site doesn't contain shoreline stabilization, the menu option allows a reduction of the shoreline setback to a total of 25 feet.**	... but staff doesn't mention they'll require replacement of 60% of the shoreline with a deed restricted, "no touch" native vegetation buffer including tall trees.	35.27

TOP PAGE

The Rest of the Story - What's NOT on Existing Residential – Expansion Options – Display Board:

(Page numbers referenced – per LUC 20.25E.065)

New 50 ft setback is not required by SMP law –pg 6 **35.28**
Staff admits was selected arbitrarily & they cannot provide ecological justification.

Display board says:

- **"No setback reduction" for 500 sf lateral expansion or 200 sf accessory structure – not true** – code specifically says both are allowed "only when in compliance w/ setback reduction provisions". – pg.10
- "Menu option allows a reduction of the shoreline setback to a total of 25 ft" ---- what is doesn't say is what one would need to do to get there.

35.29

Setback Reduction Options (Reality – Impractical Penalties/ Disincentives): - pg 11,12

- **All non-shoreline setbacks must be modified** - to a new standard under the SMP - before one can do Setback Reduction Option.
  - This requires smaller side & street setbacks than exist under current code.
  - Reality says, only New Residential could likely comply with this – so unless changed, means no one but New Residential can reduce new 50 ft setback. –pg 10,11 **35.30**
- **Reality - Setback Reduction Menu is an unrealistic set Setback Penalties:**
  - It's a smokescreen to delude owners & regulators that Property Rights have not been stripped away.
  - "Options" that provide an owner w/ real "setback relief" (25 ft & even 10ft) create strong potential for loss of property from erosion, loss of useable moorage, expensive demolition/reconstruction, or onerous planting plans.
  - All "Options" come w/ severe Properly Right Penalties (on top of physical losses) – namely:
    - Includes 5 yr or longer bond (to cover "maintenance...throughout the life of the development"),
    - Must be recorded against the property (creating permanent cloud on title),
    - Owners must sign a Hold Harmless Agreement w/ the City (to not sue in event the "Option Chosen" doesn't succeed – like erosion, etc). –pg.13

35.31

The Setback Reduction "Ten Options" Menu:

1) Remove 75% of bulkhead –get 25 ft reduction
   - For 50 ft wide lot, means left w/ 12.5 ft bulkhead – & how to utilize that "allowance" sufficient to protect existing 6 ft wide dock & neighboring properties – a requirement under the code.
   - Sloping exposed upland area for "engineered soft stabilization" means real loss of land/property, & esp. as erosion occurs over time.
   - With "reduced setback option" recreating previously-allowed 25 ft setback, water would be significantly closer than 25 ft from structure – without protection of a bulkhead.
   - Reality: an owner would not take this option & resulting risk of erosion that could undermine their structure
   - So this is not a viable option. **35.32**

2) Remove 15 ft of bulkhead –get 10 ft reduction
   - This IS on Open House Display Board, but not ramifications **35.33**
   - For a 50 ft wide lot, 15 ft. means 30% of bulkhead

- If dock is in middle of property, w/ 6 ft wide dock leaves 22 ft on each side of dock – so carving out 15 ft leaves one side of property w/ 7 ft of bulkhead to protect neighbor's property (a code requirement) & owners dock from erosion.
- Reality, an owner is unlikely to do this, as there is high probability of erosion to neighbor's property & owners dock – let alone to exposed upland
- So <u>this is not a viable option.</u>

3) <u>Open previously pipe stream – get 10 ft</u>
   - If one were to open an on-site stream pipe, it seems logical that one would put themselves in the position of being in a Critical Area, which requires more of buffer than the 5 ft listed in the code
   - Reality: it's unlikely anyone would do that **35.34**
   - So <u>this is not a viable option.</u>

4) <u>Install soft stabilization waterward – get 10 ft</u>
   - If one has "normal protective bulkhead" (allowed under SMP law), it might be 4-4.5 ft high – in order to meet proposed option of "1 vertical to 4 horizontal", one would need to add materials into the water to 18 ft waterward
     – Doesn't this negate protecting near shore habitat & would the agencies even allow this?
   - Also – it isn't clear in proposed code, whether the existing bulkhead is intended to stay or be removed from the code description – it <u>appears</u> removal was intent.
   - Reality: no owner would do this, as this would remove significant dock moorage opportunities, and logically, cause waves to "slop" high onto upland property, as they "ride" up the slope unabated, let alone erosion over time
   - So <u>this is not a viable option.</u> **35.35**

5) <u>Install > than 1000 sf pervious driveway/road materials – get 10 ft.</u>
   - This IS on Open House Display Board, but not ramifications.
   - The assumption is that one is removing/replacing impervious materials w/ previous, making this is an expensive project – And, in addition the code says pervious hardscape is allowed if owner hires engineer to design <u>and</u> if Staff approves design – <u>and</u> that Staff may require costly bond to ensure "pervious"-ness over time.
   - Reality: an owner is unlikely to do this due to demolition cost, cost for engineer, new construction cost, & vulnerability to staff discretion to require costly bond
   - So <u>this is a very unlikely option.</u> **35.36**

6) <u>Preserving/restoring at least 20% total lot outside reduced setback – get 10 ft</u>
   - For our example - Subject property is 12,000 sf & 100 ft wide.
     - 120 ft depth less 35 ft setback = 85 ft depth x 100 ft wide x 20% <u>=1700 sf native vegetation.</u>
     - This is in addition to the 60% VCA, or 100 ft x 25 ft x 60% = <u>1500 sf native vegetation</u>
   - So -owner must replant <u>total 3200 sf in native vegetation – on a 12,000 sf property!</u>.
   - Reality: an owner is unlikely to do this as would likely require hiring landscape architect, demolition/replacing cost, and likely involve a costly 5 yr bond
     - and remember this gets recorded against the property, so is not reversible
     - So <u>this is a very unlikely option.</u> **35.37**

7) <u>Replacement of bulkhead w/"wave-dissipation" stabilization – get 5 ft.</u>

- IF this were changed to allow revetment boulders to be placed waterward of existing bulkhead at reasonable angle (4 vertical to 1 horizontal, not 1 vertical to 4 horizontal, as above), then this option could be feasible for some owners.
- Since this option addresses the only valid "non-stream" based concern about bulkheads (i.e. wave dissipation), this option should be much more highly incentivized by giving a full 25 ft. setback reduction.
- Alternatively and preferably, this action should be incentivized in the SMP - AND the 25ft original setback be re-instated.

35.38

8) Increasing VCA by 5 ft – get 5 ft
   - Reality: an owner is unlikely to want to increase the amount of vegetation between their structure and the shoreline in order to be closer to the shoreline – it isn't logical
   - So this is an unlikely option.

35.39

9) Limit total impervious coverage to <10% max allowed – get 5 ft
   - Since total impervious surface includes all structures, driveways, walkways, patios many owners won't have the luxury of pursuing this option, as there may be nothing to eliminate.
   - Reality: not a real option for most owners
   - So this is not a viable option.

35.40

10) Install pervious material for min 1000 sf – get 5 ft
   - This is similar to #5 above, with less benefit.
   - Reality: an owner likely would not bother to do this to get 5 ft
   - So this is an unlikely option.

35.41

Alternatives to Options Menu – pg.13.

- If an owner cannot do any Setback Reduction Option item, the owner can spend more money & do a Special Shorelines Report, which will require proof that the proposed alternative is "equivalent or better" for ecological function than the Options Menu.
- Or- after spending money on this, one can apply for a Variance.
  - Reality: No one can prove ecological function so the Shoreline Report is non-alternative, and DOE wants SMP regulations, so would be unlikely to give a Variance.

35.42

Mitigation – is required for:

- New or Reconstruction w/ expanded footprint –anywhere on site: **35.43**
  - Vegetation of 60% vegetation of VCA (first 25 ft of shoreline)
- 500 sf lateral expansion of SF home; over 200 sf accessory structure; over 1000 sf/25% max impervious surface – in new setback:
  - Vegetation equal to expansion area in VCA. pg. 15.
- Waterward expansion w/in new 50 ft setback for SF home
  - Vegetation double the expansion area in VCA pg.16

- Planting shall be: pg 16,17
  - Consolidated location
  - Native plants – from Handbook not yet created, & "now & hereafter amended"
  - Alternative Option – provided:
    Equal/better "ecological function"
    Owner demonstrates –increased tree/veg. retention, protect/improve water quality, better buffer design

VCA (Vegetation Conservation Area) – (Same applies for ALL Residential): pg 16-20

- **VCA is first 25 ft from shoreline**
- **No more than 40% of VCA may be developed w/: lawn, pervious patios, paths, walkways, steps.**
- Improvements must be: **consolidated, contiguous, & as far from shoreline as possible.**
- When new improvements are installed, owner must plant equal area of veg., w/ 100 sf min.
- Routine veg. maintenance is allowed provided:
  - Activities consistently carried out
  - Ornamental veg. predominates over native or invasive veg.
  - Hand labor & hand-operated equipment is used for pruning – lawn mowing is OK.
- Prohibited improvements: fences, swimming pools, sport courts, accessory structures, other non-water uses.
- Tree/Native veg. retention required.
- Hazardous Trees:
  - Owner must hire professional to certify as hazardous
  - If critical habitat, like eagle's nest, must hire wildlife biologist
  - If removed should leave as wildlife snags & must be replaced in 3:1 ratio, per Handbook not yet created – & as "now or hereafter amended"
  - If imminent threat, may remove Haz. tree provided notify city w/in 14 days, get permit, submit & do restoration plan (replanting)
  - Tree cutting limited to pruning, crown thinning – with hand labor – or get a permit - pruning is per guidelines established by Director/Staff
  - Cut veg. may be left in VCA unless fire hazard or pest issue for other veg.
- Existing native trees/shrubs/groundcover is accepted toward VCA if:
  - Not part of previously mandated mitigation
  - Provided veg. provides equal "ecological function" as required veg. **35.44**

  Reality - Ridiculous arbitrary regulation.
- Native veg. removed must be replaced in 1:1 ratio
- Removal of noxious veg. allowed: if replanted w/ native/native-compatible veg. – preferred removal method – by hand.

Nonconforming Residential – (Same applies for ALL EXISTING Residential): pg 29-33

- Owners must provide documentation that proves that their residential improvements were "legally established" prior to any work requiring permit (almost all work requires permit) - meaning must prove:
  - was permitted when built **35.45**
  - has been maintained over time.
    - Documentation of "permitted" can include: permits, land use/zoning codes at time of construction
    - Documentation of maintenance can include: dated title reports, dated RE appraisals, dated photos

- Routine Maintenance/Repair are allowed provided they don't exceed arbitrary "50% of replacement value" threshold.
  - "50% threshold" is based on all improvements made w/ in three year period - entire project, not individual permits, as determined by director/staff.
  - Exempt for "50% threshold are: fire prevention measures, ADA measures, seismic retrofit, stormwater improvements, LEED measures, and "routine maintenance" (painting, caulking, washing, rewiring) **35.46**

- **Note: SMP law says "replacement is form of repair" – so WSSA disagrees that "repair thresholds" apply to replacement or repair of improvements.**

- Accidental Destruction – when "legally established" residential development is damaged/destroyed by fire/explosion/natural disaster/other unforeseen circumstances "outside control of owner", development may be repaired/reconstructed w/following limitations:
    - Note: "outside control of owner" should be deleted as give staff discretionary judgment loophole.
  - Repair/Rebuilt w/in existing footprint OR move to "less sensitive portion of site" – if move, must meet all SMP regulations including CAO & VCA.
  - Repair/rebuilt w/in one year of destruction – Reality: timing to get working drawings, bids, permits, weather constraints makes one year improbable/impractical.
  - May not expand, enlarge or otherwise increase nonconformity – Reality: SMP law specifically allows "enlarge or expand...provided...enlargement...not increase extend of nonconformity by ...extending into areas where construction/use would not be allowed..."
  - Temporary disturbance is subject to mitigation plan – means costly report/replanting plan & likely 5+yr bond – Reality: how about "re-establish existing vegetation."

- Loss of "Allowed" Nonconforming Status – if:
  1) Development is abandoned for 12 mos. w/ intension of abandoning OR
  2) Discontinuance of use for 12 mos is "prima facie evidence of intension to abandon"
     - Reality: Arbitrary, & property rights issue – the right to sell ones' property.
       - In a "down" real estate market, as we have now, a structure or use could theoretically be "abandoned" for 2-3 or more years – especially in event of an estate selling an asset, a structure/use could be empty of furniture/etc and not rented while marketing efforts take place.
       - Additionally, "higher-end" marketing efforts tend to take longer & may not include physical occupation during that timeframe.
- Permits - unless exempt under "Shoreline Substantial Development Permit" requirements, all maintenance/repair/alteration/replacement under this section shall require permits
    - Note: "Unless exempt", only city-wide permit polices should apply.

- Nonconforming w/in new 50 ft setback (not in VCA):
  1) Primary structure gets "footprint exception" & above "50% threshold" doesn't apply for "non-expansions". "Accidental destruction" provision still applies.
  2) Accessory structures >200 sf – maintenance/repair is allowed but improvements exceeding "50% threshold" must conform to "Setback Reduction Menu Options" or Special Shoreline Report. "Accidental destruction" still applies. Note:
     a) "50% threshold" not justifiable under SMP law;
     b) "Setback Reduction Options Menu" is arbitrary, infeasible, unsubstantiated by appropriate/balanced science, and a violation of property rights
        - plus, a demand for recorded documents against property, along w/ demand for agreement to not sue for subsequently resulting damages the owner is likely to incur.

- Nonconforming w/in VCA (Veg. Conservation Area):
  1) Primary structure

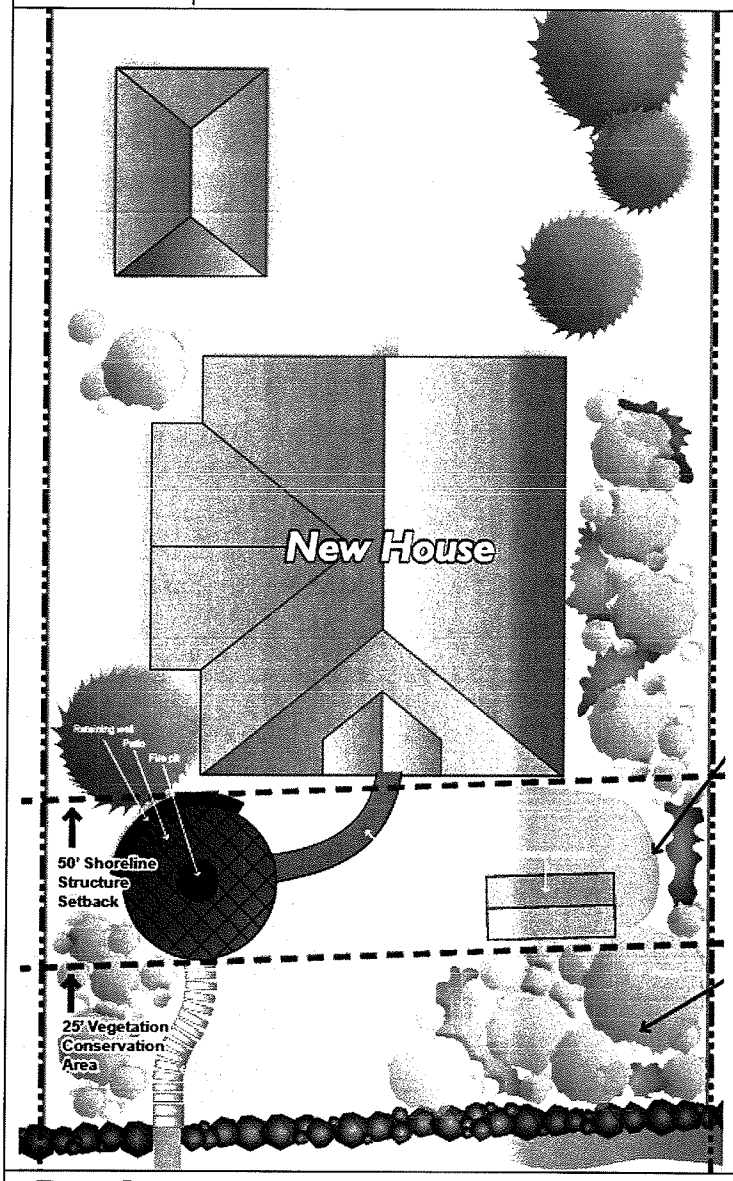
- Maintenance/repair allowed up to "50% threshold" – if improvements exceed "50% threshold" must remove portion of structure that is in VCA. Once removed, must do mitigation/restoration.
- If removal/relocation of structure portion is infeasible due to site constraints "not created by owner", must get shoreline variance.

  Reality:
  - "50% threshold" not justifiable under SMP law; provided an owner has not intruded into the VCA, this is purely a regulation to force abandonment over time
  - iif an owner cannot really maintain/repair, their structure will fall into decay.
  - Violates property rights & right to keep one's property in a saleable condition.
  - A variance is unlikely to be granted by DOE, who is in favor of strict SMP regulations, so that is not viable option.

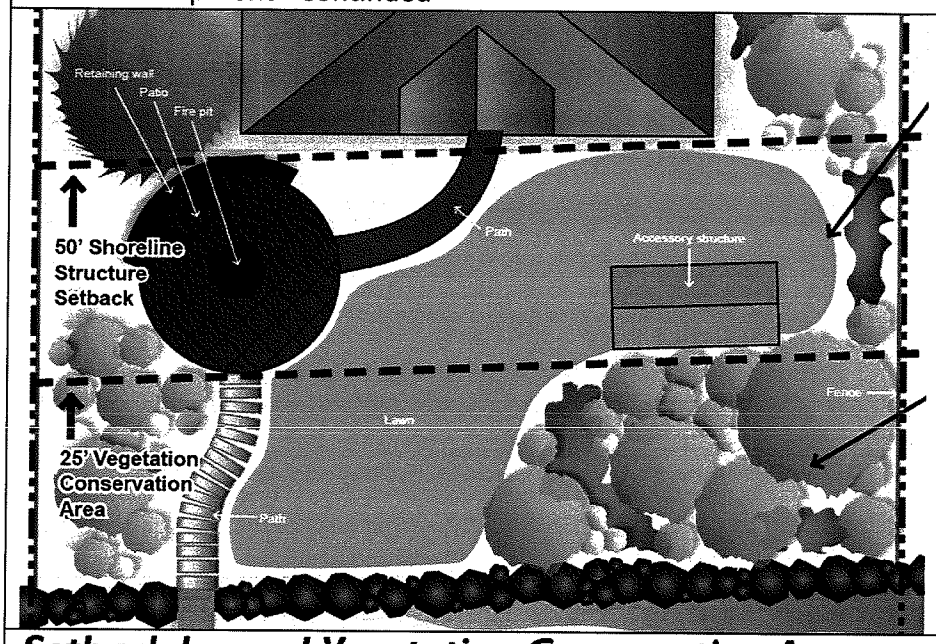
2) Accessory Structures – exactly same as above.

- <u>Nonconforming Overwater Accessory Structures (Boathouses, etc.):</u>
  Maintenance/repair is permitted – if exceeds "50% threshold", is deemed new construction & is not allowed.

- <u>Nonconforming moorage & shoreline stabilization</u> – both are allowed w/ severe restrictions/regulations – dealt w/ under "docks" and "shoreline stabilization"/bulkheads.

City Display	WSSA Critique
New Development	
	**What restrictions would there be?** **Answer:** You will need to locate to - - avoid need for a bulkhead - avoid proximity to shore - minimize topographic change - dedicate 60% VCA on shore - plant native vegetation & trees **AND, you will need to. . .** Agree to – - a maintenance bond - record VCA on title - replace trees at 3:1 ratio - leave trimmings for habitat - use only hand tools & hand labor
Draft standards for new construction: **Shoreline structure setback = 50 feet** » Landscaping standard: plant 60% of Vegetation Conservation Area » City-wide tree preservation standard » Retain existing native vegetation in Vegetation Conservation Area **Setback may be reduced using:** » Menu options » Special Shoreline Report » Variance CONTINUED BELOW	These sites should be allowed to develop without unjustified setbacks and burdensome vegetation requirements. Onerous & not practical. More time and money! Unlikely to gain approval, since Dept of Ecology regulates.

35.47

City Display	WSSA Critique	
New Development - Continued		
	New development on vacant lots and tear downs should not be penalized. Development compatible with that existing in shoreline neighborhoods should be allowed and encouraged, not penalized. To do otherwise will result in incompatible uses, force hardship and costs onto the property owner, and result in reduced attractiveness of these parcels.	35.48
Setback beyond Vegetation Conservation Area: • **Hardscape surfaces up to 25% of total area, but no greater than 1,000 s.f.** • **Retaining walls less than 30" high** • **Fire/BBQ pits** • **Landscape features including fences, fountains, statues, walkways, and stairs** • **Minor building elements** • **Accessory structures totalling 200 s.f.**	Any impervious surface constraints should be equivalent to but not exceed those imposed on **all** neighborhoods.	35.49
Vegetation Conservation Area (first 25'): • **Up to 40% new pervious patios, walkways, and decks** • **Fence on property lines** • **Fire/BBQ pits** • **Landscape features including fountains, statues, and stairs** • **Landscaping, including lawn**	There has been no rationale offered for a 40% limit, if there should be any limit at all... Fences must be kept 25 ft from shore & thus of limited value. ...but don't forget, these are part of the 40%	35.50

TOP PAGE

The Rest of the Story - What's NOT on the "New Residential" Display Board:

(Page numbers referenced – per LUC 20.25E.065)

New 50 ft setback is not required by SMP law.
Staff admits was selected arbitrarily & they cannot provide ecological justification. **35.51**

Site Requirements:

- **Must locate development to avoid need for bulkhead –"over life of development"** – SMP law says "to extent feasible" – pg 1
- **Planting of 60% of VCA (1st 25 ft from shoreline)** required for - primary structure: a) new construction, b) reconstruction w/ increased lot coverage. pg 15
- **Must locate** to" least sensitive" portions of site – **means away from water.** – pg 1
- Must minimize topographical modification – excavation restrictions. – pg 1
- Garage location must be either close to street or minimize site disturbance, and parking/driveways must be "minimum necessary" – pg 2
- Utilities must be co-located in driveway, which leads to expensive repair/replacement instances – or - do costly, time-consuming mitigation & likely assurance bond. – pg 2, 3
- **Subdivisions** (4+lots) must cluster development, must provide **public access to shoreline** – as **recorded separate tract w/ 24 hr access** - and **must provide recorded shared moorage**.-pg 4,5

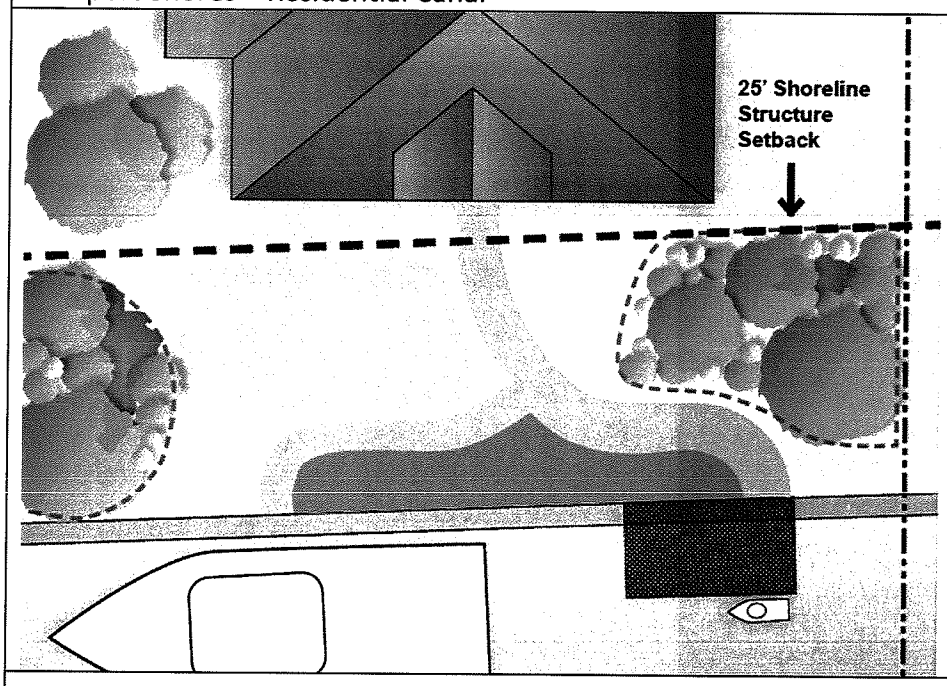
VCA (Vegetation Conservation Area) – (Same applies for ALL Residential): pg 16-20

- **VCA is first 25 ft from shoreline**
- **No more than 40% of VCA may be developed w/: lawn, pervious patios, paths, walkways, steps**.
- Improvements must be: **consolidated, contiguous, & as far from shoreline as possible**.
- When new improvements are installed, owner must plant equal area of veg., w/ 100 sf min.
- Routine veg. maintenance is allowed provided:
  - Activities consistently carried out
  - Ornamental veg. predominates over native or invasive veg.
  - Hand labor & hand-operated equipment is used for pruning – lawn mowing is OK.
- Prohibited improvements: fences, swimming pools, sport courts, accessory structures, other non-water uses.
- Tree/Native veg. retention required.
- Hazardous Trees:
  - Owner must hire professional to certify as hazardous
  - If critical habitat, like eagle's nest, must hire wildlife biologist
  - If removed should leave as wildlife snags & must be replaced in 3:1 ratio, per Handbook not yet created – & as "now or hereafter amended"

- Tree cutting limited to pruning, crown thinning – with hand labor – or get a permit - pruning is per guidelines established by Director/Staff
- Cut veg. may be left in VCA unless fire hazard or pest issue for other veg.

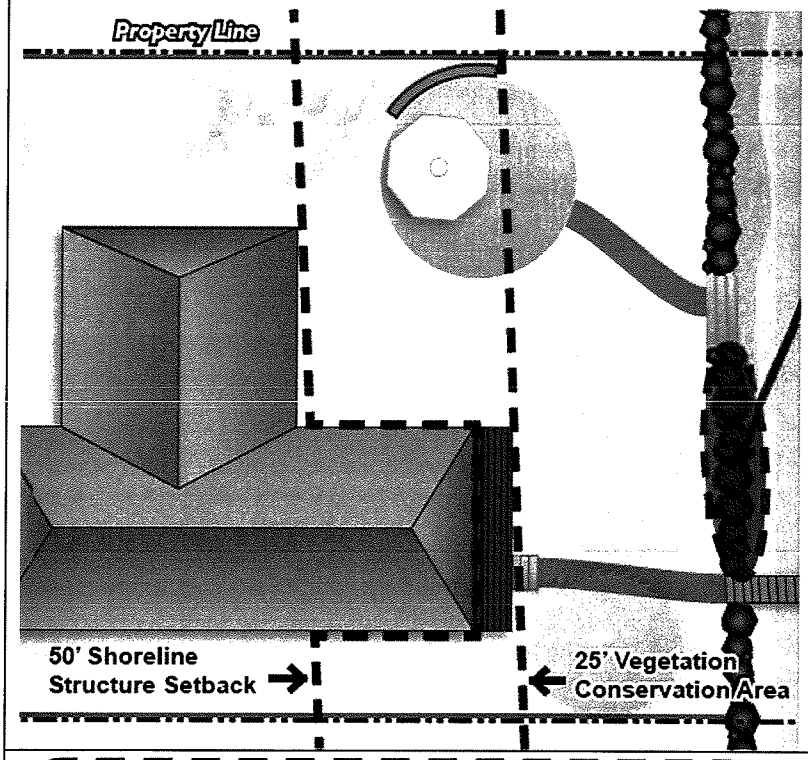
- Existing native trees/shrubs/groundcover is accepted toward VCA if:
  - Not part of previously mandated mitigation
  - Provided veg. provides equal "ecological function" as required veg. **35.52**

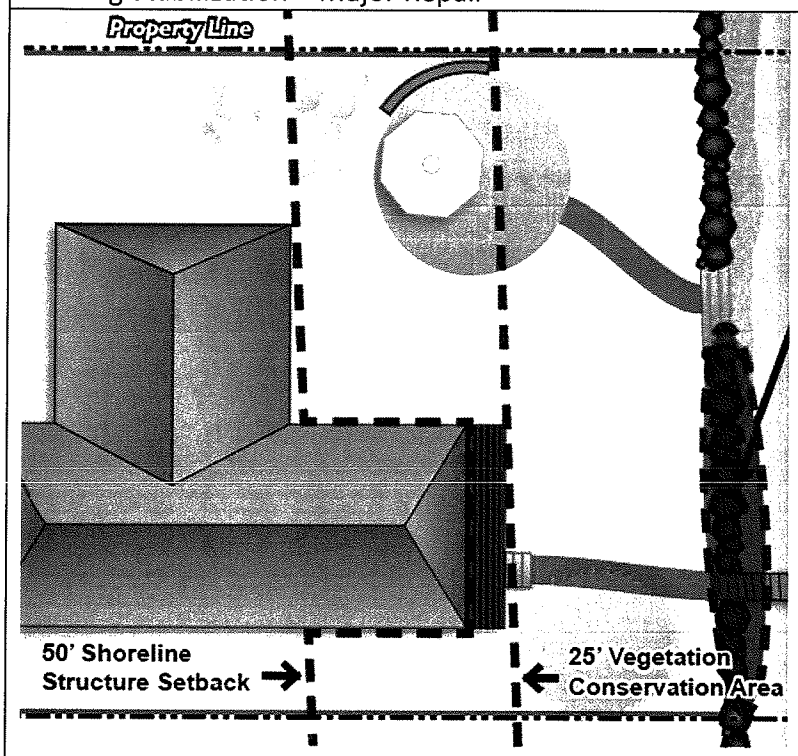
  Reality - Ridiculous arbitrary regulation.
- Native veg. removed must be replaced in 1:1 ratio
- Removal of noxious veg. allowed: if replanted w/ native/native-compatible veg. – preferred removal method – by hand.

City Display	WSSA Critique
Newport Shores – Residential Canal	
	Stipulating a 25 ft setback, rather than the 50 ft on other lakes, has not been justified. Properties on other lakes with bulkheads face even harsher conditions than this neighborhood and should not be regulated differently. All shorelines should carry the same setbacks. No substantive information has justified otherwise.
• **Shoreline structure setback = 25'** ○ **Vegetation Conservation Area = 35% of 25' setback area** ○ **Development allowed in remaining 65% of the 25' structure setback** » **City-wide tree preservation standard applies** » **Retain all significant trees in setback** • **Setback reduction** ○ **Variance only** • **Docks** ○ **Max size = 100 s.f.** ○ **Length = 10' from bulkhead** ○ **Walkways prohibited** ○ **Grated surface** ○ **Mitigation options**	

35.53

TOP PAGE

City Display	WSSA Critique	
Existing Stabilization – Minor Repair		
	WSSA's position is that the City's action in <u>restricting or requiring removal of stabilization</u> will have serious unintended consequences. Our lakes have been "urbanized". Bulkheads have been used for protection and water levels are managed by systems such as the locks on Lake WA and weirs (small dams) on the other lakes. <u>Water levels have not been properly managed and this doubles the need to retain conventional stabilization</u>.	35.54
Area of repair < 50% of total length • **Allow minor repair of legally established structures** • **May be repaired or reconstructed up to 50% of the linear length within a 3-year period** • **No expansion of height is authorized under repair provisions** • **Failed structures may not be repaired under these provisions** CONTINUED BELOW	First, the owner must prove their bulkhead was legally established. "50% & 3 yr" threshold is arbitrary AND under SMP law, replacement is an acceptable form of repair. Failure may be caused by poorly managed water levels or natural events beyond resident control. Therefore complete replacement should be allowed as provided by law.	30.55

City Display	WSSA Critique
Existing Stabilization – Major Repair	
	City staff has modified State code to declare repair of more than 50% of existing bulkheads a full replacement. This would construe them as "New". Next, staff modified State guidelines and would restrict new bulkheads only to those absolutely needed to protect existing homes, not other property features. Staffs' code also complicates the permit process for new bulkhead approval. One must (thru consultants) demonstrate that hierarchies of "soft-to-hard" stabilization measures are "not technically feasible before being allowed more protective structural methods.
Area of repair > 50% of total length • **Reconstruction or replacement of more than 50% of the linear length of the stabilization over a 3-year period** • **Major repairs are treated as new stabilization and must adopt a soft or green solution unless hard stabilization is demonstrated to be necessary**	WSSA believes staff has been overly restrictive and that State code allows that "An <u>existing</u> shoreline stabilization structure <u>may be replaced</u> with a similar structure... (and) 'replacement' means the <u>construction of a new structure</u>".
Don't miss this! **Repair is major when stabilization measure has collapsed, eroded or otherwise demonstrated a loss of structural integrity which jeopardizes its erosion protection function.**	See comments above. They apply equally here.

35.56

TOP PAGE

The Rest of the Story - What's NOT on... Existing Shoreline Stabilization Display Board:

(Page numbers referenced - per LUC 20.25E.080)

General information - SMP law says/refers to:

- "Construction of the normal protective bulkhead common to single-family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion..."
- "Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings..."
- "An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion by currents, tidal action, or waves."
- "For purposes of this section on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing stabilization measures shall be considered new structures."
- "Each master program shall contain standards governing the protection of single family and appurtenant structures against damage or loss due to erosion. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion."

General Provisions – Definitions (Applies to ALL Stablization): pg 12-13

(Note: many staff definitions are inappropriately a combination of definition and regulation)

- Shoreline Stabilization: **35.57**
  - Shoreline stabilization is:
    "To protect existing primary structures..." and is allowed "at or above OHWM."
    - Reality: SMP law includes:
      - protection of property/land as well as accessory structures
      - location of stabilization is "at or near, & parallel to OHWM".
    - Special Shoreline Report is required to modify the regulations.
  - Stabilization purpose is to protect from "effects...such as wave action, flooding, or erosion"
    - Reality: SMP law says stabilization ifs "to protect from erosion (not effects) by currents, tidal action, waves"
  - Stabilization may include vegetation, bioengineered measures combined w/ conventional vertical bulkheads.
    - Reality: New stabilization may include bioengineering combined w/ hard stabilization; not a requirement for all stabilization.

- Soft stabilization is combination of bioengineered actions, beach enhancement, anchor trees, large rocks, gravel, plantings – blending hard & soft methods may be necessary.

- Hard stabilization employs rigid structures "that armor...from effects of erosion" including "rip rap revetments", gabions, concrete retaining walls – methods: rock revetments at 3:1 slope, near vertical rockeries, vertical rigid structures (concrete).
  - Reality:
    a) Stabilization:
      - "protects (structures/land) from erosion", not "from effects of erosion"

- "armor" implies a non-penetrable shield, which only applies to vertical concrete walls,

b) "Rip rap" is rip rap (boulders) and "revetment" is a (sloped) method.
- rip rap can provide some wave attenuation (as is not solid wall)
- rip rap which is constructed in a revetment/sloped form can provide an additional level of wave attenuation.

- Avoidance Measures - defined as "techniques to minimize or prevent ...erosion that do not involve modification...at interface of land & water".
  Methods defined as: "vegetation, drainage control, walls outside setback."
  - Reality: If a site is vulnerable to "erosion by currents, tidal action, or waves", there is no "avoidance measure" that can protect it from such erosion. Methods mentioned may contribute to reducing erosion from upland causes, but logically cannot protect from waterward erosion.

- Minor Repair defined as: "Maintenance...to restore...to original condition & configuration...to ensure its continued function by preventing failure of any part...Cumulative reconstruction/replacement of >50% of linear length...over 3 year(s) is deemed major repair" 35.5
  - Reality: SMP law says:
    "An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion by currents, tidal action, or waves.
    For purposes of this section..., "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose.
    Additions to or increases in size of existing stabilization measures shall be considered new structures."
  - So: Only "additions to or increases in size" constitutes "new" or major repair –
    "50% threshold over 3 years" is arbitrary limit proposed by staff to limit right to repair/maintain, and to cause existing stabilization structures to be deemed nonconforming.
  - Reality: most repair/maintenance situations occur as the result of a sudden natural phenomenon, such as storm-caused extensive wave-action, and are not the result of owner neglect.

- Major Repair defined as: 35.59
  a) "Repair...to restore a portion of an existing stabilization...that has collapsed, eroded away, or otherwise...loss of structural integrity sufficient to jeopardize its erosion protection function
  b) or...cumulative reconstruction/replacement (is)... >50% of lineal length...over 3 year period...
  c) (and) Major repair...treated as...new stabilization."
  - Reality: Per SMP law:
    a) "An existing shoreline stabilization structure may be replaced with a similar structure..."replacement" means the construction of a new structure."
    b) Additions to or increases in size of existing stabilization measures shall be considered new structures."
  - Conclusions:
    a) "collapsed, eroded away, or otherwise...loss of structural integrity sufficient to jeopardize its erosion protection function" is a subjective arbitrary definition of major repair

b) "50% threshold over 3 years" is arbitrary limit proposed by staff to limit right to repair/maintain, and to cause existing stabilization structures to be deemed nonconforming
c) "Additions or increases" constitute new stabilization
d) <u>There should be no differentiation between minor and major repair.</u>

<u>Major Repair should NOT be treated as "New Stabilization" – these are existing bulkheads</u>
Below is listing of New Stabilization Regulations: (In depth – see New Stabilization Comments)

- Technical Feasibility
- Soft Stabilization Options
- Hard Stabilization Options
- New Stabilization Location
- Mitigation & Restoration
- Retention of Setback – survey requirement
- Potential expansion of Shoreline Jurisdiction delineations

<u>General Provisions of Proposed Code:</u>

- <u>Minor Repair</u>:
  - Must be "legally established" – so must have documentation to prove
  - Minor Repair only to restore to original condition, but not if "so significant as to cause loss of structural integrity sufficient to jeopardize its erosion protection function."
  - No significant expansion/alteration allowed, except minor changes "to reduce (ecological) impact"
  - Not >50% cumulative reconstruction/replacement of linear length during 3 year period
  - Reality:
    - Many owners won't have access to documentation, even if was "legal" at time of construction
    - Criterion is ludicrous for #b – any repair could/would involve elements of loss of "structural integrity" – otherwise, what/why is one repairing?
    - How does one measure/document "changes to reduce (ecological) impact"? – is this a valid criterion?
    - "50% threshold over 3 years" is arbitrary limit proposed by staff to limit right to repair/maintain, and to cause existing stabilization structures to be deemed nonconforming.

- <u>Major Repair:</u>
  a) Treated as New Stabilization – except "legally established" measures presumed "necessary to protect existing shoreline uses" – & include no requirement to prove avoidance not technically feasible"
  b) Allowed when:
     - "Legally established"
     - Conforms to hierarchies under New Stabilization for hard &/or soft measures
     - In flood area
       - Soft measures allowed in flood area subject to hierarchies -see New Stabilization.
       - Hard measures must be outside flood area – unless use rip-rap <= 3:1 slope combined w/ bioengineering (sloping, beach nourishment, vegetation)

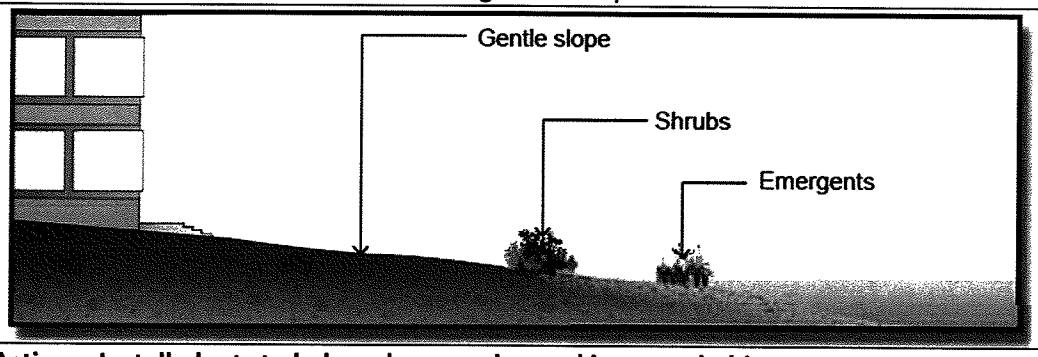
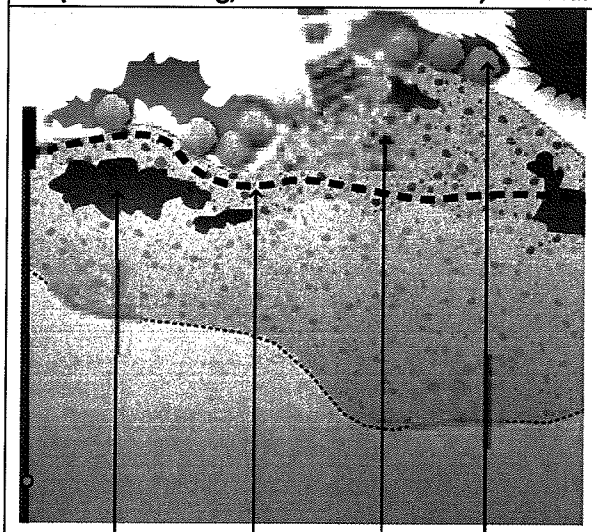
       OR – if distance between primary structure & OHWM is <= 10 ft.
     - Legally established in SR Canal – can repair/replace in existing configuration.

- Reality:
  - Many owners won't have access to documentation, even if was "legal" at time of construction
  - Per SMP law excerpt:
    a) "An existing shoreline stabilization structure may be replaced with a similar structure..."replacement" means the construction of a new structure." **35.60**
    b) Additions to or increases in size of existing stabilization measures shall be considered new structures."

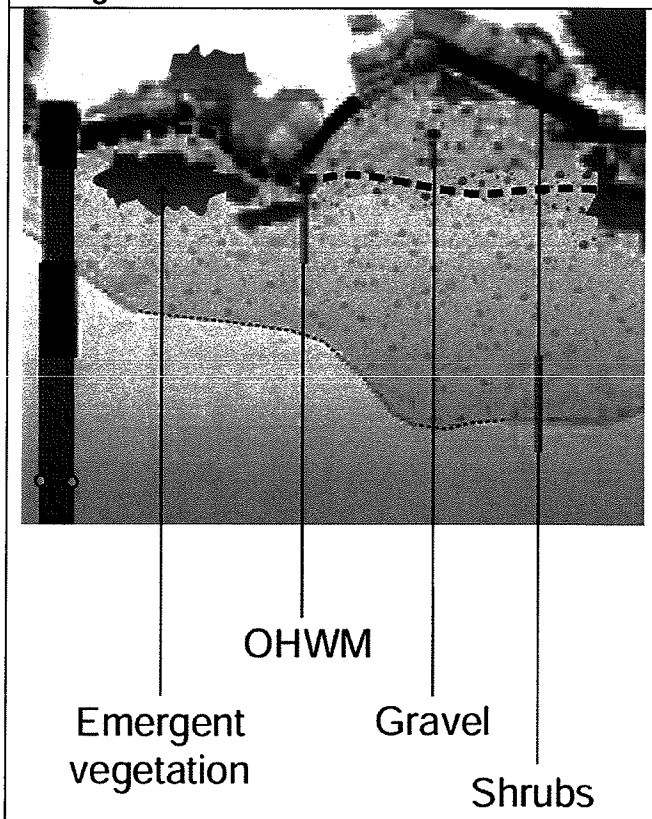
    Conclusion: – Major Repair, including Replacement is allowed under SMP w/out – arbitrary "50% threshold" is not substantiated.
  - Hierarchies for New Stabilization (heard &/or soft) are onerous & unrealistic – are referenced in depth under "New Stabilization" Comments

Removal of existing Stabilization:

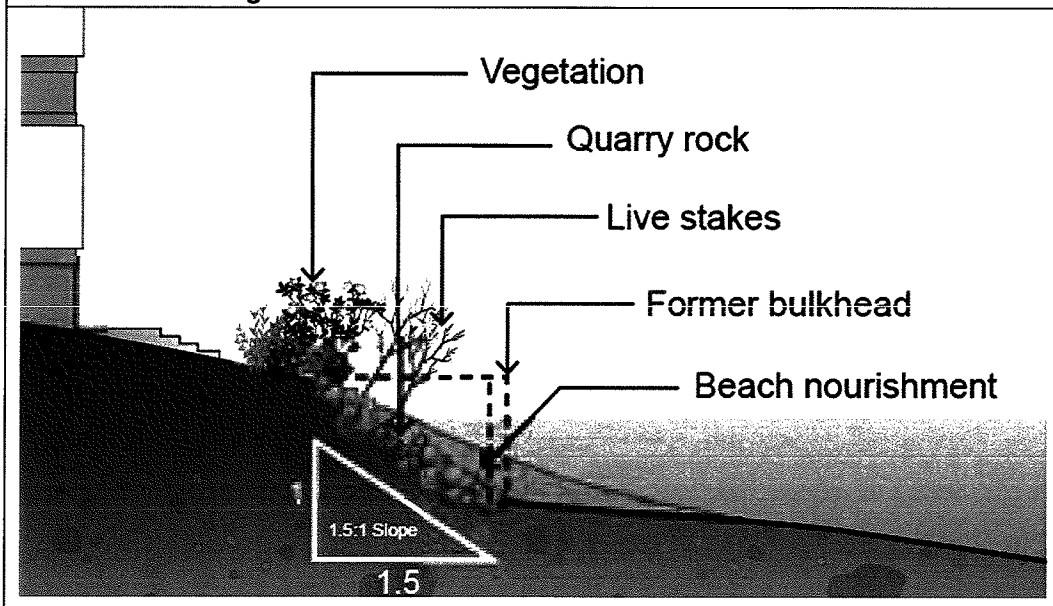
- May be "voluntary" to mitigate or restore
- OR – done under Setback Reduction Menu – provided:
  - Impacted area restored/replanted per Mitigation Plan
  - Impact on adjacent properties minimized & existing stabilization structures protected
  - Recorded document prohibiting future hard stabilization
  - Short-term impact minimized thru BMP's (Best Mngmnt Practices)
- Reality: **35.61**
  a) "Mitigation" is never voluntary – it is imposed on owners by City – owners DO exercise stewardship but definition of Mitigation (& onerous regulations/bond) do not meet definition of real stewardship
  b) Restoration is only a voluntary action & cannot be imposed under SMP regulations
  c) Setback Reduction Menu is an unrealistic smokescreen to delude owners & regulators that Property Rights have not been stripped away
     - "Options" that provide an owner w/ real "setback relief" (25 ft & even 10ft) create strong potential for loss of property from erosion, loss of useable moorage, expensive demolition/reconstruction, or onerous planting plans.
     - All "Options" come w/ severe Properly Right Penalties (on top of physical losses) – namely:
       - Includes 5 yr or longer bond (to cover "maintenance...throughout the life of the development"),
       - Must be recorded against the property (creating permanent cloud on title),
       - Owners must sign a Hold Harmless Agreement w/ the City (to not sue in event the "Option Chosen" doesn't succeed – like erosion, etc).
         (LUC 20.25E.065 -pg. 13)

City Display	WSSA Critique
New Stabilization – **"Avoidance"** – Vegetation Option	
	**Applicants for new or replacement bulkheads would need to prove none of the following actions are feasible before staff would approve their use!**
Action – Install plants to help reduce erosion and improve habitat.	
New Stabilization – **"Avoidance Not Feasible"** –Option 1 - **Bioengineering** Increasing level of stabilization allowed when avoidance or lesser form of stabilization Is not feasible. A determination of feasible alternatives shall consider the following Factors: Slope, Ability to Mitigate, Wave height, Nearsore Depth, Fetch, Wind Direction, Risk to Structure, Cost.	An expensive, complex report process will be required of the applicant, not the City. 35.62
Slope contouring, Beach nourishment, and Plantings	
	
Feasibility Study **Required to demonstrate avoidance or soft approach is infeasible. Hard stabilization is not allowed when avoidance or soft approach is possible.** CONTINUED BELOW	Unnecessary and extremely expensive. Leaves interpretation to staff. 35.63

35.64

City Display	WSSA Critique
New Stabilization – **"Avoidance Not Feasible"** – Option 2 – **Rock & Wood** **Action – Place semi-natural arrangements of rock and wood, with transition to neighbors bulkheads.**	See comments above. They apply equally here.
	
New Stabilization – **"Avoidance Not Feasible" – Option 3 – Rigid Structure** **Action: Place semi-natural arrangements of rock and wood, with greater rigidity to protect primary structure and adjacent properties. (Including logs)**	
Feasibility Study **Required to demonstrate avoidance or soft approach is infeasible. Hard stabilization is not allowed when avoidance or soft approach is possible.**	See comments above. They apply equally here.

CONTINUED BELOW

City Display	WSSA Critique
New Stabilization – "**Avoidance Not Feasible**" – Hard Stabilization **Options 4, 5, and 6** **Action – Place sloped bulkhead varying the design depending on site conditions and location of dwelling.**	See comments above. They apply equally here.
	Staff proposes 3 "slope scenarios" in order of priority. The owner must prove (thru consultants) that a scenario is "technically not feasible" before allowed to consider the next level of protection. **WSSA asks:** Have these scenarios been prepared by qualified hydrologic professionals and tested under the extreme conditions that occur along Bellevue shorelines? 35.65
3:1 Slope **Shallow-sloped bulkhead paired with some bioengineering elements.** ***2:1 Slope*** **Modest-sloped bulkhead with narrow vegetation enhancement at toe or top of bulkhead.** ***1.5:1 Slope*** **Traditional bulkhead at sites with a primary structure ≤10' from OHWM.**	Finally, before construction of the stabilization method is allowed, owners are required to: 35.66 1) a sign Release of Liability w/ the City, and 2) to Record against their Title the permanence of the stabilization measure selected.
A mix of hard and soft stabilization techniques may be used on different portions of the same property.	

TOP PAGE

The Rest of the Story - What's NOT on New Shoreline Stabilization - Display Board:

(Page numbers referenced - per LUC 20.25E.080)

General information - SMP law says/refers to: 35.67

- "Construction of the normal protective bulkhead common to single-family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion..."
- "Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings..."
- "An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion by currents, tidal action, or waves."
- "For purposes of this section on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing stabilization measures shall be considered new structures."
- "Each master program shall contain standards governing the protection of single family and appurtenant structures against damage or loss due to erosion. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion."

General Provisions – Definitions (Applies to ALL Stabilization): pg 12-13 35.68

(Note: many staff definitions are inappropriately a combination of definition and regulation)

- Shoreline Stabilization:
  - Shoreline stabilization is:
    "To protect existing primary structures..." and is allowed "at or above OHWM."
    - Reality: SMP law includes:
      - protection of property/land as well as accessory structures
      - location of stabilization is "at or near, & parallel to OHWM".
    - Special Shoreline Report is required to modify the regulations.
  - Stabilization purpose is to protect from "effects...such as wave action, flooding, or erosion"
    - Reality: SMP law says stabilization ifs "to protect from erosion (not effects) by currents, tidal action, waves"
  - Stabilization may include vegetation, bioengineered measures combined w/ conventional vertical bulkheads.
    - Reality: New stabilization may include bioengineering combined w/ hard stabilization; not a requirement for all stabilization.

- Soft stabilization is combination of bioengineered actions, beach enhancement, anchor trees, large rocks, gravel, plantings – blending hard & soft methods may be necessary.

- Hard stabilization employs rigid structures "that armor...from effects of erosion" including "rip rap revetments", gabions, concrete retaining walls – methods: rock revetments at 3:1 slope, near vertical rockeries, vertical rigid structures (concrete).
  - Reality:
    - Stabilization:

- "protects (structures/land) from erosion", not "from effects of erosion"
- "armor" implies a non-penetrable shield, which only applies to vertical concrete walls,

- "Rip rap" is rip rap (boulders) and "revetment" is a (sloped) method.
  - rip rap can provide some wave attenuation (as is not solid wall)
  - rip rap which is constructed in a revetment/sloped form can provide an additional level of wave attenuation.

- Avoidance Measures - defined as "techniques to minimize or prevent ...erosion that do not involve modification...at interface of land & water".
  Methods defined as: "vegetation, drainage control, walls outside setback."
  - Reality: If a site is vulnerable to "erosion by currents, tidal action, or waves", there is no "avoidance measure" that can protect it from such erosion. Methods mentioned may contribute to reducing erosion from upland causes, but logically cannot protect from waterward erosion.

- Minor Repair defined as: "Maintenance...to restore...to original condition & configuration...to ensure its continued function by preventing failure of any part...Cumulative reconstruction/replacement of >50% of linear length...over 3 year(s) is deemed major repair"
  - Reality: SMP law says:
    "An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion by currents, tidal action, or waves.
    For purposes of this section..., "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose.
    Additions to or increases in size of existing stabilization measures shall be considered new structures."
  - So: Only "additions to or increases in size" constitutes "new" or major repair –
    "50% threshold over 3 years" is arbitrary limit proposed by staff to limit right to repair/maintain, and to cause existing stabilization structures to be deemed nonconforming.
  - Reality: most repair/maintenance situations occur as the result of a sudden natural phenomenon, such as storm-caused extensive wave-action, and are not the result of owner neglect.

- Major Repair defined as:
  a) "Repair...to restore a portion of an existing stabilization...that has collapsed, eroded away, or otherwise...loss of structural integrity sufficient to jeopardize its erosion protection function
  b) or...cumulative reconstruction/replacement (is)... >50% of lineal length...over 3 year period...
  c) (and) Major repair...treated as...new stabilization."
  - Reality: Per SMP law:
    a) "An existing shoreline stabilization structure may be replaced with a similar structure..."replacement" means the construction of a new structure."
    b) Additions to or increases in size of existing stabilization measures shall be considered new structures."
  - Conclusions:
    a) "collapsed, eroded away, or otherwise...loss of structural integrity sufficient to jeopardize its erosion protection function" is a subjective arbitrary definition of major repair

b) "50% threshold over 3 years" is arbitrary limit proposed by staff to limit right to repair/maintain, and to cause existing stabilization structures to be deemed nonconforming
c) "Additions or increases" constitute new stabilization
d) There should be no differentiation between minor and major repair. 35.69

Regulatory Requirements for New (& Major Repair) Stabilization:

Technically Feasible: pg.14

- Determination of "technical feasibility" – for avoidance or stabilization measure – subject to Director/staff discretion - based on a professional report, to include:
  - Site conditions – slope, beach, nearshore depth, flooding risk, proximity of primary structure to OHWM
  - Considerations: 1.wind - velocity/frequency, 2. Fetch (distance wind/waves travel), 3.wave height/frequency
  - Risk to primary structure over 3 year period & probability to mitigate risk
  - Cost to avoid - if disproportionate to impact of proposed disturbance – including impacts over time
  - Ability of temporary & permanent disturbance to be mitigated.
- Reality: 35.70
  - Avoidance is not a realistic option – owners are extremely unlikely to do expensive stabilization if it's not needed to "protect from erosion".
  - Arbitrary for Director/staff to evaluate a professional's report – a professional's report should be sufficient justification
  - Primary structure and 3 year threshold:
    - Limiting risk to primary structure only, is not warranted.
    - 2. "3 year threshold" is arbitrary & capricious constraint proposed by staff – it violates property rights - the right to maintain one's property/structures in a saleable condition.
  - SMP law says:
    "Each master program shall contain standards governing the protection of single family and appurtenant structures against damage or loss due to erosion. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion."
  - "Cost to avoid" vs. "impacts of disturbance over time" is a totally subjective non-measurable criterion and should be deleted.

New or Enlarged Stabilization: pg 14

- Allowed – only to protect existing primary structures...where avoidance...not technically feasible.
- Type – soft stabilization, unless owner demonstrates not technically feasible – only director determines.
  - Developed sites w/ <10 ft between primary structure & OHWM, assumed to require hard stabilization
  - b) This provision doesn't apply to SR Canal.
- Reality:
  - Director should not have arbitrary discretion - a professional's report should be sufficient justification
  - b) 10 ft limitation totally arbitrary – so 15-18 ft, out of luck? – Who came up w/ this? 35.71

- c) SR Canal exclusion - discriminatory & inequitable.

Soft Stabilization Options: pg. 15

- Based on practically & viability - in relation to slope, wave energy/direction, large erosion-causing event frequency.
- Hierarchy of preference:
  1. Bioengineering – slope, beach nourishment, coconut fiber berms, fascines, live staking, vegetation
  2. Bioengineering w/ structural features – like: large boulders, large logs, course woody debris, & partial use of rigid structures to protect existing rigid structures on abutting properties (assumes means neighbors bulkheads).
  3. Bioengineering w/ structural features in #2 combined w/ limited use of rigid structures which "as an additional safety measure" are located as far as technically feasible from OHWM "while ensuring long-term safety & stability of primary structure".
- Reality:
  a) Owners are extremely unlikely to do expensive stabilization if it's not needed to "protect from erosion".
  b) Inequitable - Liability for inadequate stabilization falls to owner – City is requiring Hold Harmless Release of Liability & who holds Contractor liable? 35.72
  c) What is "additional safety measure" of locating additional stabilization as far from OHWM as possible?
  d) Who ensures "long term safety & stability of primary structure"?

Hard Stabilization – New or Enlarged: pg.15

- Owner must hire professional to prove soft stabilization not technically feasible.
- Hierarchy of preference:
  - (3:1) - Quarry rock/rip-rap – slope <= 3:1 combined w/ bioengineering (slope, beach nourishment, live staking, vegetation).
  - (2:1) - Methods in #1, but where slope & distance to primary structure doesn't allow 3:1 slope, & vegetation is confined to live staking & veg. below OHWM or at top of wall.
  - (1.5:1) - Rigid, near-vertical structures – 1.5:1 slope – quarry rock or artificial materials (think mean concrete) – for sites where OHWM is <=10 ft from primary structure. Wall shall be minimum necessary & not >48 inches from footing.
- Reality:
  - (3:1) - Slope ratios not specific in proposed code 35.73
    - Does staff mean 3 vertical to1 horizontal? – this may be fairly reasonable.
    - Per Open House Display, apparently mean 3 horizontal to 1 vertical – this is not reasonable.

    Reason: The latter would create slope for waves to ride quite high onto upland property, & causing erosion.
  - (2:1) - Slope ratio unclear in proposed code
    - Per Open House display, apparently mean 2 horizontal to1 vertical ratio – while this is an improvement over 3:1, it's not clear what the "real world" impacts would be in terms of waves "slopping" onto upland property, causing erosion
  - (1.5:1) - Slope and distance - not reasonable
    - 1.5:1 slope ratio gives totally inadequate protection if structure is as close as 10 ft to OHWM – waves will "slop/slam" up/onto structure
    - 10 ft distance limitation is arbitrary & capricious - as is 48 inch height
      - Reason: Owners are extremely unlikely to do expensive stabilization if it's not needed to "protect from erosion".

- Inequitable - Liability for inadequate stabilization falls to owner – City is requiring Hold Harmless Release of Liability & why holds Contractor liable?

New Stabilization Location: pg.16

- "At or behind OHWM"
- In documented special flood hazard area – stabilization must be located at upland edge of flood area – except soft stabilization may be located in flood area.
- When allowed – Hard stabilization may be located in flood area – provided "impact on flood storage capacity of floodplain is minimal"
- Stabilization is prohibited waterward of OHWM, except soft measures incorporating aquatic habitat improvements – no modification of lake bottom is allowed except: beach augmentation, large woody debris, or other specified.

- Reality:
  a) SMP law says: " at or near, and parallel to, the OHWM"
  b) It makes no sense to restrict stabilization to the upper edge of a flood area. **35.74**
  Reasons:
  - In so requiring, the City is promoting &, in fact, guaranteeing that land waterward of that point will have not protection from erosion.
  - Flood areas have apparently been deemed to include FEMA's arbitrary 100 yr flood zones - a 100 yr flood by definition has a 1% chance of occurring in any year – again, the City is promoting & guaranteeing that private property waterward of the upper edge of such a zone will be unprotected from potential erosion.
  - Restricting stabilization IN the flood area to soft measures creates liability for the city, knowing full-well that protection from erosion is not guaranteed – AND, the City is requiring owners to execute Hold Harmless Release of Liability documents, apparently for that very reason.

  c) What would be required to prove (for hard stabilization IN a flood area) that "impact on flood storage capacity of floodplain is minimal"?

Stabilization & Setback Reduction Menu:

- Where owner removes hard stabilization & replaces it w/ soft stabilization, per Setback Reduction Options 1 & 2, future use of hard stabilization is prohibited.
- Reality:
  Another reason why owners would be extremely unlikely to select Opt.1&2 under Setback Reduction Menu – ADDITIONALLY - they would have recorded the action on their title and released the City from liability – owners are smarter than that.

35.75

Mitigation and Restoration:

- Any new permanent or temporary disturbance associated w/ major repair or new stabilization must be mitigated &/or restored per a mitigation & restoration plan.
  - Reality: **35.76**
    - Restoration is a voluntary action and cannot be mandated under the SMP
    - WSSA requests the arbitrary distinction between major & minor repair be eliminated – it's all (minor) repair
    - Rather than costly, time-consuming, property-invasive mitigation (including a bond), just require the area to be "re-established to its pre-existing condition" after construction/repair.

Retention of Setback w/ New Soft Stabilization:

- When an owner replaces "legally established" hard stabilization w/ soft or avoidance measure, the structure setback shall continue to be from OHWM existing prior, as located by a survey prior to bulkhead removal – such survey to be recorded.
  - Reality: **35.77**
    - What happens if owner cannot document "legally established" for old bulkhead?
    - Additional costs to owner for survey – for something they "already have", i.e. a "set" setback.

Expansion of Shoreline Jurisdiction due to Shift in OHWM: **35.78**

- If the City requires, or an owner elects, a stabilization measure that results in changing the shoreline jurisdiction line(s) onto any property (other than the subject property), then:
  - The City shall notify the affected party in writing
  - The City may propose to grant relief from the regulations resulting from expansion of the shoreline jurisdiction
  - A proposal & permit must be submitted to DOE – if approved, notice of relief must be recorded.
- Reality: **35.79**
  - The City obviously knows its messing with property rights big time – this is a slippery slope – so a soft stabilization measure can create a "moving target" – the Shoreline Jurisdiction can change as a result of such action – The City and any owner should know:
    - How often do these things change, who makes these decisions, what happened to surveys and certainty about real property – and what about the Release of Liability issue?

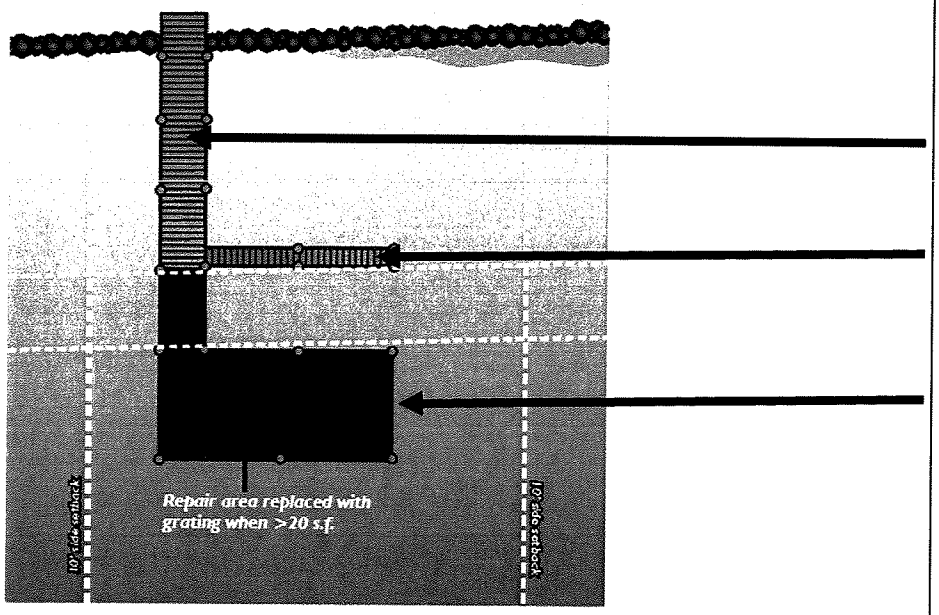
      It appears the City is way out of bounds.
  - Additionally, "the affected party" must spend time & money (let alone anxiety) on obtaining: City's approval for relief, permit & DOE's approval from relief, then has "cloud" on title

    Buyers may ask – will this happen again? – What am I really buying?

    And - Who carries liability for diminishing the value of the "affected party's" property?

Stabilization Repair:

WSSA does not support Major Repair to be treated as "New Stabilization" **35.80**

City Display	WSSA Critique	
Existing Docks - Repair		
Overview Statement ->	WSSA's position on docks is that – **(a)** the City should leave dock regulation to State and Federal agencies that have jurisdiction. (Duplication is not necessary and would be costly), and **(b)** the City does not have the expertise to design safe docks. (The applicant's dock specialist and higher agencies should work out the design.)	**35.81**
Standards for Dock Repair / Maintenance: **The proposed draft identifies the following activities as repair and maintenance:** • **Repair / replacement of 100% of decking** • **Repair / replacement of 100% of substructure** • **Repair (cutting, splicing, capping) of 100% of piling** • **Replacement of up to 50% of piles (note: cumulative over 3 year period)** » **Grated decking required for repair of decking >20 s.f.**	Two messages are not made clear in this definition of "maintenance" (1) if the activity isn't considered repair, then the rules for NEW docks apply, and (2) the fine print limits the owner to an unreasonable 20 square feet for routine maintenance!	**35.82**
Don't miss this! **For example, on an existing dock with 20 piles: up to 10 piles may be replaced, the remaining 10 spliced or capped, all decking and substructure replaced, and the entire surface grated.**	Important to note here - (1) The configuration of existing pilings and stringers may not accommodate grated decking, (2) a professional may be needed to determine what's feasible, and (3) new steel piles may be needed. So 30 s.f. of deteriorated boards could lead to a $100K new dock.	**35.83**
	This diagram is useful to help understand some terms: This is the "pier" or walkway area. A finger pier (usually very narrow) The main platform or moorage area. This diagram construes all docks are constructed with an "F" configuration. This is not true.	

CONTINUED BELOW

TOP PAGE

The Rest of the Story - What's NOT on
Existing Docks - Display Board:
(Page numbers referenced – Per LUC 20.25E.065)

General Regulations – ALL Docks: pg.21-22

- Specific environmentally-friendly materials – this does not need to be specified in SMP as agencies will regulate
- Dock lighting – min. elevation to minimize light emissions/spill **35.84**
- Accidental Destruction ("beyond control of owner") - if lawfully established, can rebuild dock in same configuration provided reconstruction commences w/in one year from date of destruction – temporary disturbance shall be restored w/in 30 days per a mitigation plan - which includes costly report(s), planting plan, assurance bond (5 yrs to over life of action).
  - "Beyond control of owner" should be deleted as gives staff discretionary judgment loophole.
  - Note: "lawfully established" will likely need to be proven thru owner-provided documents as is required under Nonconforming Regulations under residential uses.
  - How about "re-establish existing conditions" rather than mitigation – 30 days unrealistic
  - Reality: Depending on timing of destruction, time to do working drawings, obtain permits, & time-period exclusions due to various "habitat" requirement, it is unlikely the one year limitation is practical/probable.
  - Boathouses – Planning Commission determined can be replaced in event of natural destruction – where is this provision in proposed Regs.?
- Alternatives - Special Shorelines Report may be used when proposal will provide "net benefit...ecological function" – since no one can measure ecological function, don't know how report can provide alternative. **35.85**

Repair – of 'legally established" docks: pg. 27-28

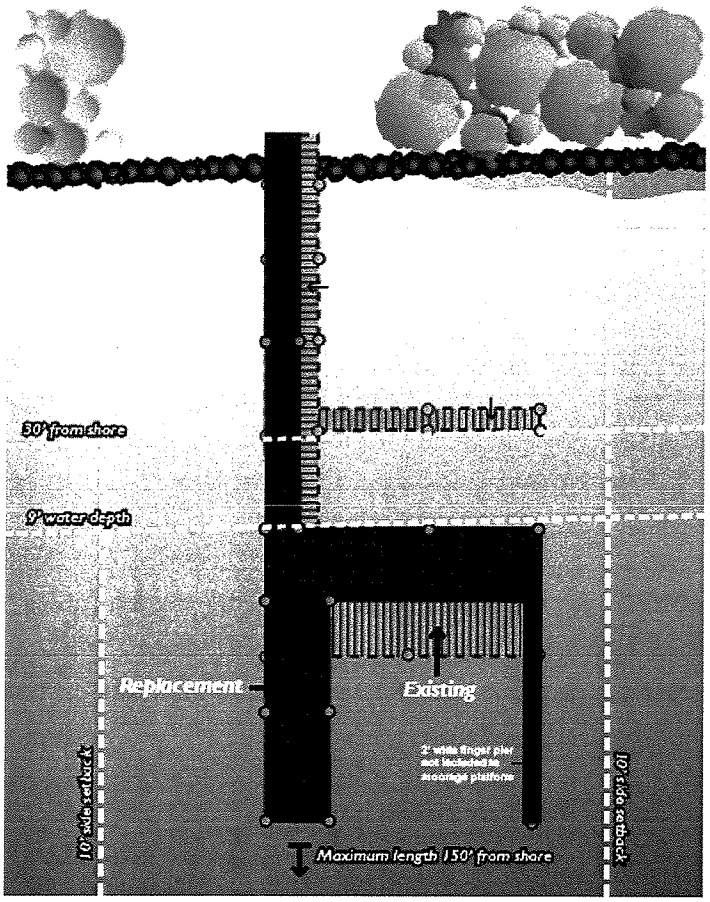
- Can repair/replace in existing configuration
- Limitations – w/in 3 year time period – any or all of these:
  - Replacement (as repair) <50% existing piling
  - Repair up to 100% existing piling in existing location – allowed method: "cut/splice/cap"
  - Repair/replacement (as repair) dock substructure/stringers/joists
  - Repair/replacement (as repair) dock surface - > than 20 sf repair/replace requires grated surface
- If exceed limitations or reconfigure, then considered new dock & must meet new dock regulations
- Reality: SMP law says "replacement is form of repair" – so WSSA disagrees that "new" dock standards apply to replacement docks. Also, 20 sf decking limitation is totally unrealistic & could trigger major substructure modifications, thus potentially being considered a "new" dock. **35.86**

Boat/Watercraft Lifts: pg 28-29

- Fixed lifts preferred over freestanding lifts
  - Reality: staff doesn't understand that both lift styles require poles/pilings into substrate.
- Number: two boat lifts, 4 watercraft lifts, or one boat lift & two watercraft lifts **35.87**
  - Reality: There's been no justification given for these limitations.
- Location – moorage platform or 30 ft from shore
  - Reality: this creates unsafe conditions where children/etc could fall into lift(s) as would be in "deep water" part-of-dock, AND lifts are not stable in deeper water - so liability for owner & city - not viable location.

Canopy/Covers:

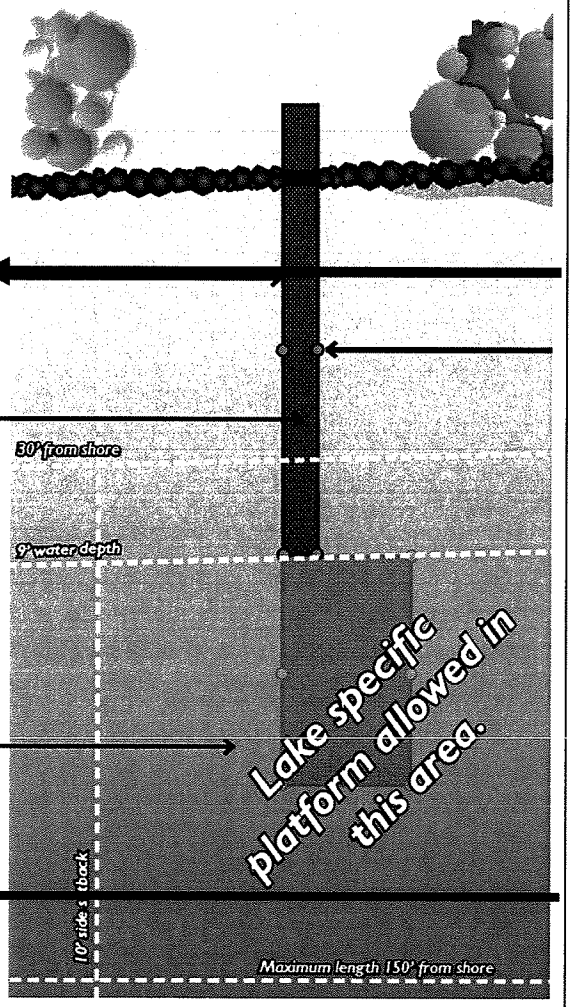
- Clarify: Regs. say "cover" – think mean canopy, as covers are size/shape of boat & fitted to boat/watercraft – need clarified, assume mean canopy - Regs: **35.88**
- One canopy per dock
  - Reality: if have two boats, need two canopies
- Solar access:
  - Orient canopy to allow max solar access
    - Reality: boat lifts are placed adjacent to docks – cannot have lift perpendicular or otherwise oriented without dock protection
  - Canopy 8 ft above OHWM
    - Reality: owners use canopies to protect boats from sun/weather-damage – this regulation is ridiculous – additionally <u>the boat</u> already shades the water, so what value is this?

City Display	WSSA Critique
Existing Docks - Replacement	
	**Here is a clearer summary:** Applicants are told to – - <u>narrow</u> the pier to an unsafe 4 ft (elsewhere 3 ft is stipulated) - <u>remove</u> the finger pier, - <u>stay away</u> 10 ft or more from neighboring properties, - <u>extend</u> the walkway at least 30 ft from shore OR reach a depth of 9 ft of water, but - <u>don't extend</u> more than 150 ft from shore, and - <u>reduce</u> the platform to a size staff believes "fits" each lake (WA = 350 s.f., Samm. = 250 s.f., PL = 100 s.f. including pier) We ask other practical questions below…
Standards for Dock Replacement: ***Walkway:*** • **Length = greater of 30' from OHWM or 9' water depth** • **Width = 4' (Note: can increase width up to 6' total if platform area is reduced by 2:1 ratio)** ***Moorage Platform:*** • **May be equal to existing platform area or maximum allowed for new dock, whichever is greater.** ***Decking:*** • **Must be grated** ***Piling:*** • **One set within first 30'** • **Walkway = 8" max; Platform = 12" max** » **Mitigation: four options to meet standard**	Some practical questions – If reaching 30 ft has the pilings in 20-30 ft of water, will the dock be stable? **35.89** Why does one need to "buy-back" a safe width of walkway by reducing ones moorage platform? **35.90** Will 8 inch diameter pilings pull out easily? Will they be stable for large boat moorage? **35.91** NOTE – mitigation options were not defined.
Don't miss this! • **Existing moorage platform size does not need to change when dock is rebuilt and reconfigured.** • **Alternative designs to the prescriptive standard are considered through a Special Shorelines Report.** <u>TOP PAGE</u>	… but what other actions will be required of the applicant? Who does these reports and at what cost?

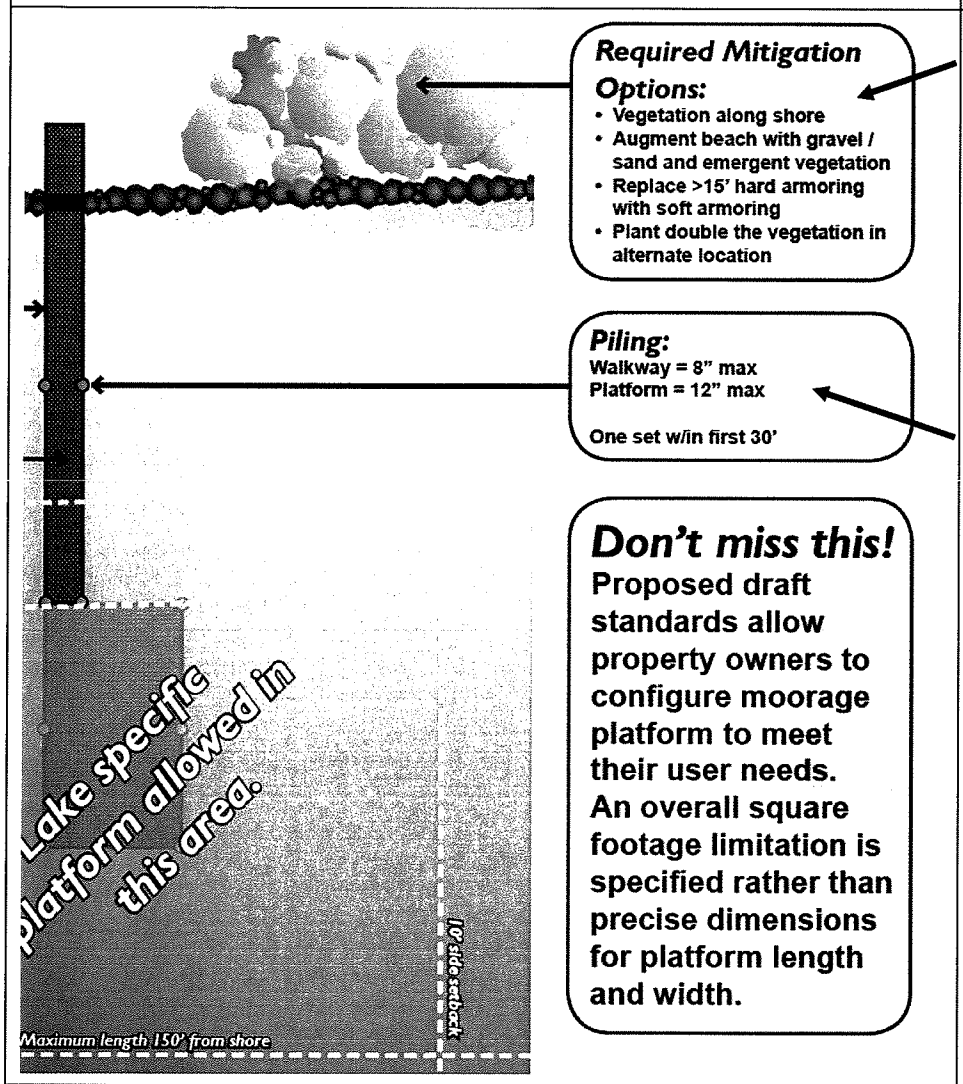
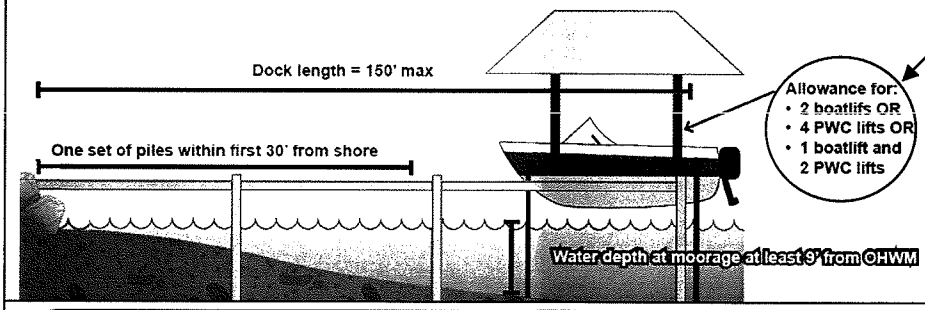
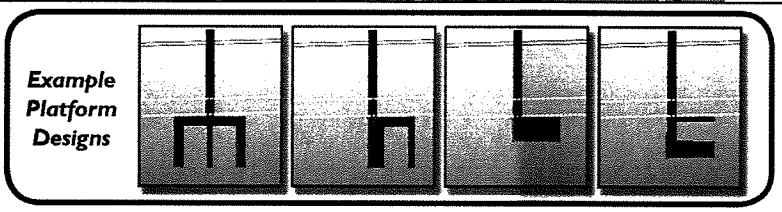
City of Bellevue Shoreline Management Program Regulation Display Panels – WSSA Critique

Jump to: Exist Docks | Existing Development | New Development | Existing Bulkheads | New Bulkheads | | Phantom Lake | OHWM | Newport Shores |

City Display	WSSA Critique	
New Docks		
Overview Statement ->	WSSA's position on docks is that – **(a)** the City should leave dock regulation to State and Federal agencies that have jurisdiction. (Duplication is not necessary and would be costly), and **(b)** the City does not have the expertise to design safe docks. (The applicant's dock specialist and higher agencies should work out the design.)	35.92
Walkway: **Length: Greater of 30' from OHWM or 9' water depth Width: 4'** **Note: Can increase width up to 6' total if platform area is reduced by 2:1 ratio** **Example: For every 1' of walkway and corresponding walkway area, twice as much platform area must be reduced.**	Practical considerations may prevent adherence to these as local standards, and	
Decking: **Grated**	These requirements are not prescribed by State and Federal agencies.	
Moorage Platform: ***Platform Location:*** **Platform must be located the greater of 30' from OHWM or 9' water depth** **Platform may be located in this area using desired configuration up to maximum size threshold** ***Platform Size:*** **Lk WA = 350 s.f. max Lk Sammamish = 250 s.f. max 2' wide finger pier allowed (not included in platform size) Note: platform area can increase when walkway width is reduced to 3'. Allowed increase in platform area is equal to amount of reduced walkway area.**	This statement conflicts with the opening statement above. Further, 5 ft is a minimum safe walkway and a call for 3 ft is more than unreasonable and reflects a lack of understanding of safe design.	35.93
CONTINUED BELOW		



TOP PAGE

City Display	WSSA Critique
New Docks - Continued	
	Several of these "Options" are standard requirements of controlling State and Federal agencies. However, the last two have not been justified on any scientific basis and weather-related conditions on all Bellevue lakes make soft armoring suspect. Is this why the City will require a waiver of liability. These are regulated by higher agencies and Bellevue should not include these in their SMP. BUT, the City has no jurisdiction over the location of boat moorage locations. So why does the City specify ...
	... the applicant must choose between: 2 boatlifts or 4 watercraft lifts or 1 boatlift and 2 watercraft lifts. No basis has been provided for this. **35.94** Not shown here are restrictions that the lower edge of the canopy **must be 8 ft above high water!**
	The intent is that boat propellers not be aimed at the shoreline and stir up sediment. Again, the City has no jurisdiction of moorage locations. **35.95**

CONTINUED BELOW
TOP PAGE

The Rest of the Story - What's NOT on

New Docks - Display Board:

(Page numbers referenced – Per LUC 20.25E.065)

General Regulations – ALL Docks: pg.21-22

- Specific environmentally-friendly materials – this does not need to be specified in SMP as agencies will regulate
- Dock lighting – min. elevation to minimize light emissions/spill
- Accidental Destruction ("beyond control of owner") - if lawfully established, can rebuild dock in same configuration provided reconstruction commences w/in one year from date of destruction – temporary disturbance shall be restored w/in 30 days per a mitigation plan - which includes costly report(s), planting plan, assurance bond (5 yrs to over life of action).
    - "Beyond control of owner" should be deleted as gives staff discretionary judgment loophole.
    - Note: "lawfully established" will likely need to be proven thru owner-provided documents as is required under Nonconforming Regulations under residential uses.
    - How about "re-establish existing conditions" rather than mitigation – 30 days unrealistic
    - Reality: Depending on timing of destruction, time to do working drawings, obtain permits, & time-period exclusions due to various "habitat" requirement, it is unlikely the one year limitation is practical/probable.
    - Boathouses – Planning Commission determined can be replaced in event of natural destruction – where is this provision in proposed Regs.?
- Alternatives - Special Shorelines Report may be used when proposal will provide "net benefit...ecological function" – since no one can measure ecological function, don't know how report can provide alternative.

New & Replacement Docks – Use Chart Regulations: pg.23,24

- **Note: SMP law says "replacement is form of repair" – so WSSA disagrees that "new" dock standards apply to replacement docks.**

- Proposed Bellevue dimensions cover:
    - 1 dock per lot, sideyard setbacks, max dock length, max dock size, max walkway width & length, platform water depth & distance from shore, max platform size, piling sizes & location, grated decking, and shared docks.
    - Reality: Most dimensional requirements are governed by agencies – city should not adopt agencies guidelines (as are more restrictive than can be negotiated), but should defer to contractor & agencies to negotiate, as part of SMP. **35.96**
    - WSSA does not support shared docks – leads to unnecessary "partnership" disputes
- Bellevue specific dimensions that should retained in SMP:
    - 10 ft sideyard setbacks
    - No max on dock sf (except Newport canal – 100 sf) – **35.97**
      Note: new dock sizes are in reality negotiated w/ agencies.
    - Platform sizes:
      a) no greater than existing platform size (for existing, reconfiguring, replacing dock) --- OR

b) Bellevue-specific
Note: Bellevue sizes are: 350 sf – Lk Wa; 250 sf – Lk Sam; 100 sf – Newport Canal -
Note: new platform sizes are in reality negotiated w/ agencies.

- Two max mooring piles

- Use Chart Footnotes: pg 25
  - Floating docks OK – Phantom Lk, & Newport Canal (if nec.)
  - No boat-watercraft lifts closer than 10 ft to sideyard, unless recorded agreement between adjacent owners.
    - Reality: many lots are 50 ft wide & regulation is unrealistic.
  - Walkway may increase to 6 ft if reduce platform by 2:1 ratio.
    - Reality: WSSA thinks Bellevue & agency-preferred 4 ft wide walkway is unsafe & this is a point to be negotiated w/ agency.
  - If walkway is reduced to 3 ft, can "pick up" delta in sf in platform size 35.98
    - Reality: owners & City would not want liability for dangerous 3 ft wide dock.
  - Platform depth can be less than 9 ft if propeller is located in> than 9 ft depth
    - Reality: City has no jurisdiction over where one ties/moors one's boat.
  - Three more footnotes deal w/ repetitive agency-controlled issues so are not listed.

Limitations – New & Replacement Docks: pg.25 –27

- Number of Docks
  - One dock/per lot or one joint-use dock allowed for 2+ adjacent lots
  - 24 ft min lot width allowed for common moorage lot, for group of contiguous properties (100 ft/per unit allowed up to max of 1000 sf)
    - Reality: this would cause liability & safety problems for City & adjacent neighbors due to narrow lot size
    (10 ft setback + 4 ft dock + 10 ft setback – sounds like Cinderella's shoe)
  - Adjoining owners can do combined water frontage thru recorded agreement – one shared dock allowed
    - Reality: can't foresee any reason owners would want to do this – "partnership issues" 35.99
  - No boathouses
- Design Criteria – moorage must be on platform or >30 ft shore
    - Reality: City doesn't have jurisdiction on where boats may be moored.
- **Performance standards**:
  - Avoid impacting native veg., woody debris, emergent veg.
    - Reality – is there any reality to this?
  - No skirting – agencies handle this
  - Walkway form – ramps or bridges & railings heights
    - Reality: this is a marine reference – these forms not used on lakes.
  - Removal of aquatic weeds
    - Reality: over regulation, weeds just come back the next year.
- **Mitigation Regulations** – new docks – chose one item:
  1) Plant, whichever is less:
  (if already have 60% veg., can't do this option - both include costly 5+ yr bond)

a) 10 ft deep & 60% of shoreline length (on 50 ft wide lot = 300 sf veg.)
b) Plant equivalent to dock sf in veg. (many docks are 500-700 sf)
- Reality: if already have 60% veg. why make owner do more?

2) Augment beach w/ sand/gravel & plant emergent (in water) veg. along 60% of shoreline
3) Remove 15 ft bulkhead – involves hold harmless agreement?
4) Plant two times veg. required under #1. above – somewhere in 200 ft from shoreline – includes costly 5+ yr bond.
- Reality: get to pick option from #1.? — means 600 sf veg. or 1000-1400 sf veg.? - Regulation not well-thought out

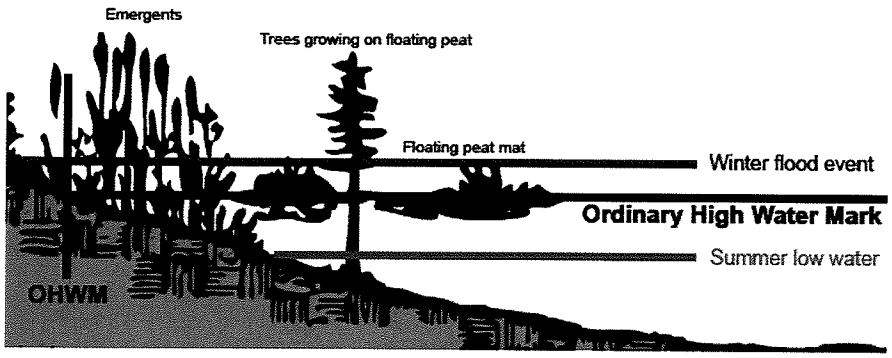
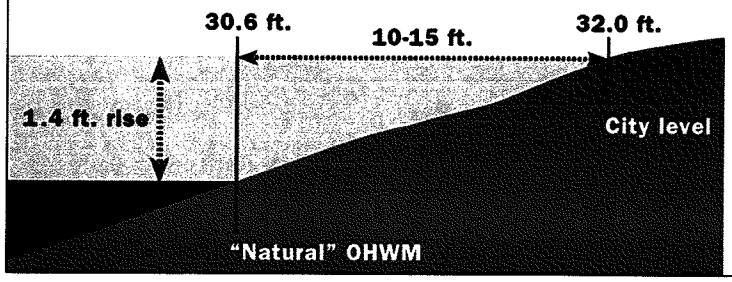
35.100

Boat/Watercraft Lifts: pg 28-29

- Fixed lifts preferred over freestanding lifts
  – Reality: staff doesn't understand that both lift styles require poles/pilings into substrate.
- Number: two boat lifts, 4 watercraft lifts, or one boat lift & two watercraft lifts 35.101
- Reality: There's been no justification given for these limitations
- Location – moorage platform or 30 ft from shore
  – Reality: this creates unsafe conditions where children/etc could fall into lift(s) as would be in "deep water" part-of-dock, AND lifts are not stable in deeper water - so liability for owner & city - not viable location.

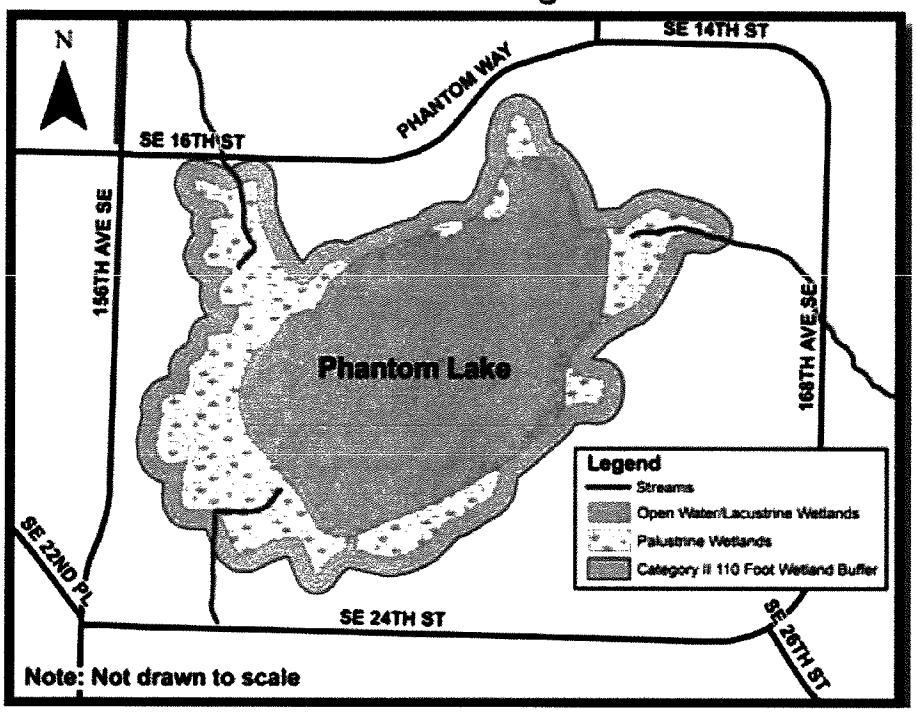
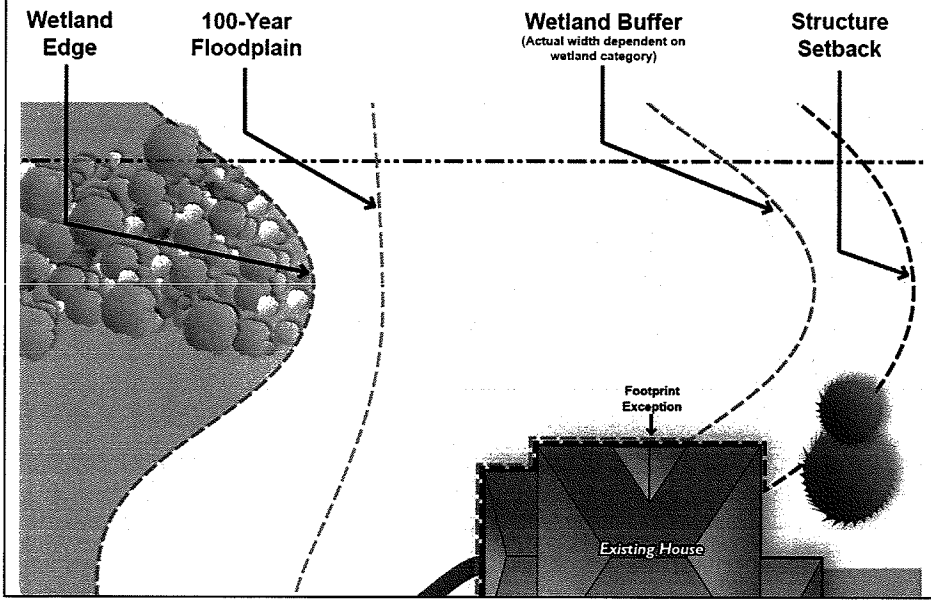
Canopy/"Cover":

- Clarify: Regs. say "cover" – think mean canopy, as covers are size/shape of boat & fitted to boat/watercraft – need clarified, assume mean canopy - Regs:
- One canopy per dock 35.102
  – Reality: if have two boats, need two canopies
- Solar access:
  - Orient canopy to allow max solar access
  - Reality: boat lifts are placed adjacent to docks – cannot have lift perpendicular or otherwise oriented without dock protection
  - Canopy 8 ft above OHWM
  - Reality: owners use canopies to protect boats from sun/weather-damage – this regulation is ridiculous – additionally the boat already shades the water, so what value is this?

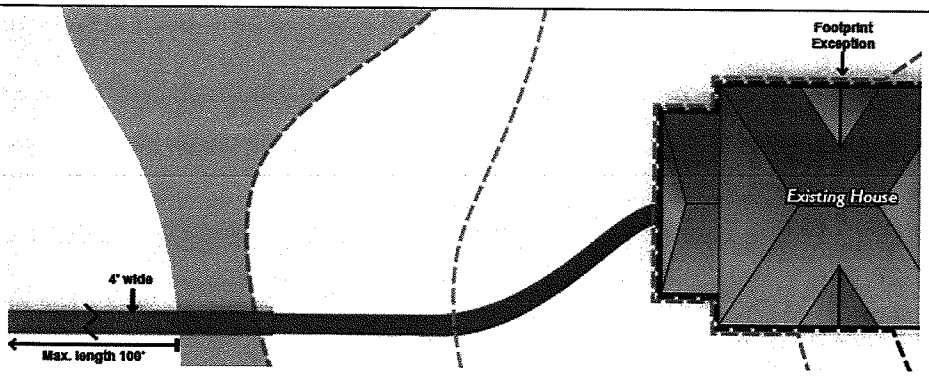
City Display	WSSA Critique
Ordinary High Water Mark (OHWM)	
	This diagram attempts to say that the OHWM is demarcated by a change from water tolerant vegetation to plants that are not.
How is the OHWM used? • **To determine the extent of shoreline jurisdiction** • **To determine the location for shoreline armoring** **Note: City requires a site-specific determination by a qualified professional** • **To determine the extent of a structure setback** **Note: On Lake Sammamish, an applicant chooses to use either:** **1. Standard elevation of 31.8 feet (NAVD 88)** **2. Site-specific determination by a qualified professional**	"Jurisdiction" is everything 200 ft upland from the OHWM The State, not the City stipulates who does these studies. Discussion here is for Lake Samm. An elevation of 31.8 feet is not justifiable.
Lake Sammamish OHWM Study • **Study conducted at the request of citizens** • **Focused to establish standard elevation from which to measure structure setbacks** • **Used statistical verification to aid decision** ○ **Ensures with 95% confidence that the shoreline setback for any proposed development would not be measured from a point waterward of the true (physical/biological) OHWM for that specific site**	The City study is no longer valid since it's been shown the lake water level has not been managed as stipulated by the Corps of Engineers. 30.6 ft is their standard In shifting to the 95% level mentioned here, the City deviated from a value "most representa-tive" of OHWM to one assuring that on 95% of properties the OHWM would be lower.
	WSSA's diagram on the left depicts how an arbitrary OHWM (some 1.4 ft above valid levels) would force applicants to build 10, 15, or more feet away from shore than is necessary.

35.103

TOP PAGE

City Display	WSSA Critique
Phantom Lake	
Don't miss this! **Critical areas standards generally apply in lieu of additional shoreline regulations.**  	This announcement says it all ! Staff would take advantage of mis-management of Phantom Lake to designate its surrounding properties as critical areas. By taking advantage of State laws which declare wetlands to be critical, the City would side step its culpability that nurtured wetland-like conditions unnaturally onto lakeside parcels. This has occurred in part because of the City's failure to abide by easement agreements to maintain lake outflow. **35.104** With planned expansion of neighboring Eastgate, and no assurance additional storm water will be directed elsewhere, nearly all residents have signed petitions urging a more reasoned treatment in the SMP.
 	This diagram provides information necessary to understand the impacts to PL residents. (Note: the lake is off to the left margin) The wetlands have crept higher on properties. Complicating this is the floodplain extending even higher, but even more important, most property owners would find they're confronted with an even deeper wetland buffer (100 ft or more). Add to this the structure setback (20 ft) and many, many residences will be declared non-conforming; perhaps unable to secure flood insurance. **35.105**

CONTINUED BELOW

City Display	WSSA Critique
Phantom Lake - Continued	
 • **No Shoreline Setback** ○ **Wetland/floodplain regulation in critical areas overlay district 20.25H applies** ○ **Structures may be placed closer to lake through buffer averaging and/or critical areas modification when not in floodplain** ○ **Maintenance of existing landscaping and landscape features allowed** ○ **City-wide tree preservation standard applies** • **Unique dock standards** ○ **Max size = 250 s.f.** ○ **Walkway: width = 4' and length = 100'** ○ **No moorage platform** ○ **Floating docks permitted** • **Shoreline stabilization** ○ **When legally established, may be maintained and repaired** ○ **New stabilization allowed when located outside floodplain and need demonstrated**	Comments above apply. In addition - - Most parcels will be limited by a floodplain level that has been coerced artificially higher! - Trees will be prone to decay and must be replaced at a ratio of 3:1. Meanwhile, homeowners accept the risk of them falling. These limits are unacceptable, especially since Phantom Lake harbors no endangered species of fish. Unlike other lakes, PL docks are limited to 250 s.f. including the walkway. Stabilization design will require geotechnical studies and engineering design.

35.106

TOP PAGE

Anita Skoog-Neil	the state's guidelines do not say the setback is required, only that it is something that can be done. The guidelines do require that the vegetation conservation area must be substantiated by science. She provided the Commission with a package summarizing the proposed regulations by major residential areas of concern. The core issue of concern is the creation of regulatory nonconformity. Residential structures, bulkheads and docks are all targeted. Through the stroke of a pen, shoreline owners can be stripped of their rights. When the issue of nonconformance was discussed with the Commission, the staff memo was thorough in outlining the legal context for regulation of nonconforming uses and structures. Nonconforming structures are those that complied to all applicable codes in effect at the time of their creation but which no longer comply due to changes in code requirements. The origins of nonconforming uses in developments have been regulated under Washington's common law, a body of law that has been developed in the courts rather than from statutes or the constitution. Washington's zoning enabling statutes are silent with regard to the regulations of nonconforming uses in development. The Shoreline Management Act does not specifically address nonconforming uses, but the Act does authorize the Department of Ecology and the jurisdictions to adopt necessary and appropriate rules to carry out the provisions of the Act. Somehow that has been translated to Ecology adopting the resultant nonconforming rules. The staff memo states that amendments to the city's Shoreline Master Program, such as changes in setbacks, may result in some legally established structures and uses becoming nonconforming, including piers and docks. Changing the setback from 25 to 50 feet will allow the city to harvest more than 500 shoreline structures into the category of nonconforming, not including docks and bulkheads. The memo implies that the new setback will be okay because nonconforming uses are always afforded some protections and are allowed to continue until they gradually fade away, or are phased out by local ordinance. The staff memo states that it is common practice in Bellevue for land use regulations to include a safety valve to assure some minimum amount of development. The memo also states that the legal department allows that it will be difficult to predict how the combination of regulations will impact each parcel. In short, the legal department will protect the city while the taxpayers will have to fend for themselves. The memo states that the continuation of legally nonconforming uses can interfere with the community's ability to achieve new policy, but barriers to property improvement and reinvestment can also impact community character and livability in the early years of policy implementation. The Shoreline Hearings Board in addressing nonconformity bluntly stated that the purpose of the shoreline setback is to phase out residential use within the setback area. That could mean that during the next Shoreline Master Program update the setback will be expanded to include the entire 200-foot shoreline jurisdiction. The WAC guidelines are full of unsubstantiated statements with regard to stream and marine science, and the city has been handed science from the Department of Ecology. It is clear the regulations are designed to achieve a predetermined political land use policy. The Commission has been left with the task of finding and speaking the truth.	**35.107** **35.108** **35.109** **35.110**

City of Bellevue Planning Commission, Bellevue, WA **May 25, 2011**

RE: Shoreline Management Program Fishery Science

As the Commission completes its deliberation of the Shoreline Master program, I'd like to reiterate the concerns I presented to the Planning Commission last year regarding several aspects of the science provided to you by staff and the City consultants. Since not all of you were present for my presentation, I will present a little of my background. I've lived on Lake Sammamish since the mid-80s, and, for over forty years I spent my professional life as a fishery scientist and teacher. Twenty-four of those years were as a professor at the University of Washington. I also served as the Federal Court Technical Advisor on all their salmon and steelhead issues for fourteen years under the *US v Washington* Case, or the Boldt decision. I have authored or coauthored approximately 175 scientific papers in over 20 peer reviewed journals.

36.1

I reviewed three major documents[1] prepared for the City of Bellevue by consultants with respect to the fishery science contained therein. Although I found some concerns in all of the reports, I concentrated my comments on the BEST AVAILABLE SCIENCE (2005) report, because this report had a considerable amount of material regarding fisheries and associated recommendations that would supposedly be of value to the salmon fisheries in the three lakes that fall under Bellevue's purview (Lake Sammamish, Lake Washington, and Phantom Lake [which has no salmon]). I also found the BEST AVAILABLE SCIENCE (2005) report to be the most problematic report and the one that appears to have been relied upon very heavily by the Bellevue Staff in developing their SMP.

I found the 2005 BAS report has both errors of omission and commission in my opinion. Much of the information presented is based upon scientific studies done in streams and in the salt water environment. These studies have not been shown to be directly applicable to the shorelines of these three Bellevue Lakes. One of the major tenets of this BAS report is that it makes recommendations supposedly aimed at increasing the salmon populations of the lakes. However, many of these recommendations are based on information that is subjective, speculative, non-existent or actually erroneous with respect to the scientific literature. This report states on page 7-43, "...available pertinent literature is limited. Nonetheless, inferred and hypothetical associations can be made based on available scientific literature." As I read the report, it appears that a lot of the conclusions and recommendations related to fisheries aspects in the report are inferred and hypothetical. In many cases, there is scientifically valid information that leads to different conclusions than those views expressed in the BAS report –however, these alternative views are not presented, which leads me to believe the report has been written with an agenda in mind rather than presenting all of the scientific facts and options available.

36.2

Major examples of this are the recommended planting of large trees near the shoreline and introduction of large woody debris (LWD) along the shoreline. These are championed with the idea of increasing the type of habitat cover needed for young salmon to utilize during their out-migrations from the lakes. However, there is no mention that trees and LWD also will act as structure that will provide hiding places for both smallmouth bass (SMB) and largemouth bass (LMB) as predators to ambush young salmon in Lake Sammamish and Lake Washington. In fact, there are scientific papers that demonstrate increases in the amount of LWD in lakes will

increase the populations of these predatory bass. Introduction of LWD in lakes and reservoirs is a common management tool used in many states to enhance both smallmouth bass and largemouth bass populations—this aspect of LWD was not presented in the BAS report. Shoreline trees were mentioned as a contributing source of terrestrial insects utilized as food by the young salmon. However, in large lakes, terrestrial insects are not a major food source of the young salmon, because they predominately eat aquatic insects and crustaceans on their journey to saltwater.

36.3 In the same report, over-water structures (docks) are vilified as places that harbor fish species that prey on young salmon, when in reality docks are simply acting as a surrogate for natural cover. The use of flow through decking on the top of existing docks would further simulate natural cover and should be encouraged by easy permitting. The degree to which predation under and around docks may impact the number of out-migrating young salmon is unknown. The bass in Lake Sammamish and Lake Washington do not target the out-migrating young salmon, but merely appear to be opportunistic feeders on them as they pass through the lakes on their way to the ocean. However, increased LMB and SMB populations associated with enhanced LWD in the two lakes could be expected to lead to an increase in the total number of young salmon eaten. This view regarding enhanced LWD on shorelines is not presented in the BAS report.

36.4 Page 7-36 states, "In order to avoid habitat alterations and stop the loss of shoreline areas and functions, bulkheads needing **any type** of maintenance, repair, and/or retrofitting should be considered for removal or replacement with vegetative and large woody debris structures as shoreline protection alternatives. This recommendation is based on a conservative interpretation of the best available science." Yet on the previous page 7-35, the report states that the effectiveness of alternative shoreline armoring (bioengineering) techniques is unknown…." Here the report is making a recommendation which is far from conservative based on an unknown efficacy of the techniques suggested. Additionally, removal and replacement would be extremely expensive to property owners with no mention of this.

36.5 Most egregious are errors that misstate the facts. For example on page 7-45, the BAS report states that, "No studies were found that address the cumulative effects of in- and over-water structures on Bellevue's Lake WA, Lake Sammamish, and Phantom Lake shorelines." Then on page 7-46, it is stated, "….it is known that the effects of docks and piers (and associated in- and over-water structures) are incremental and cumulative in nature (Jennings et al., 1999)…." The Jennings paper (1999) does not mention either docks or piers—it is a study of rock rip-rap and concrete retaining walls. So this conclusion is not valid based on both the statement on 7-45 and the erroneous citation of Jennings. The use of rock rip-rap tapered to 45 degrees has much less impact on the environment and it results in considerable species richness because of its complex habitat with interstitial spaces according to Jennings—but this positive aspect of rock rip-rap and its ability to dissipate wave action as compared to concrete walls were not discussed in the BAS report when it discussed bulkheads.

Multiple points of view will exist on any topic. The more important the issue, the more important is the need to assure that all and any opposing views are presented to the fullest extent—not just those scientific ideas that support a given agenda. The promulgation of policy, rules and regulation related to science must pass the transparency test of being based upon sound scientific principals—only then will the public view them as fair. I feel very strongly that the BAS report

done for Bellevue does not always give any or enough scientific documentation to support many of the views it presents, which makes them speculative at best in many situations presented. Additionally, the BAS report often does not present scientifically valid information which supports an alternative view or approach that may be in opposition to a view they are championing. The specific examples mentioned in this summary are only to illustrate the concerns that I have with the BAS 2005 report, as there is not time to discuss all of the numerous problems and concerns that I think exist in it.

In Summary, the City of Bellevue's Best Available Science Report (2005) frequently:

1. Failed to present opposing science, alternative views and alternative options
2. Used a considerable amount of non-peer (colleague) reviewed science
3. Misinterpreted and misquoted scientific citations
4. Made conflicting statements, recommendations and conclusions
5. Made conclusions and recommendations without supporting science

What is essential for truly Best Available Science is: **36.6**

6. A better understanding of the dynamics of the systems
7. Controlled evaluation and testing in advance
8. Inclusion and consideration of opposing science
9. Consideration of alternative actions and options
10. True peer review of the relevant science reports

The Shoreline program will affect many homeowners and the shoreline environment. Your decisions with respect to these regulations should be fact-based to assure both an equitable and an effective program is established. Thus, I think it important that you consider my comments of last year, which are equally valid at this time and are summarized herein.

Thank you,

Gilbert Pauley, PhD

244 W Lake Sammamish Pkwy SE

[1] (1) "A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shore zone Development on ESA-Listed Salmonids in Lakes", T. Kahler, et al, 2000. (2) "Best Available Science (BAS) Review", Herrera Environmental Consulting, 2005, (3) "Shoreline Analysis Report – Analysis and Characterization", Watershed Co., 2009.

Dr. Gilbert Pauley

Education

BS – University of Washington – Salmon Management/Geology

MS – University of Washington – Shellfisheries Biology/Invertebrate Zoology

PhD – University of California – Biology/Microbiology & Immunology

MBA – University of Puget Sound – Finance/Statistics

Fishery Science Work at State and Federal Agencies

Professor – UW College of Fisheries – 24 years

- Taught Recreational Fisheries Management and Fish Diseases
- Chairman of 50 - 55 MS and PhDs in Fishery Science

Fishery Advisory Board Chairman – Anadromous Fish (salmon and steelhead Issues) – 14 years

- Federal Court Technical Advisor – Boldt Decision (*US v Washington*)
- 27 Major Fishery Issue Trials
- 92 Fishery Advisory Board Recommendations (Arbitrator)

Biological Honors and Awards

- US Dept. of Interior Award for Superior Service
- Gilbert Pauley UW Endowed Student Support Fund
- National Institutes of Health Doctoral Fellowship
- Thurlow C. Nelson National Shellfisheries Association Award
- Faculty Merit Award UW College of Fisheries

Peer Reviewed Publications

- 175 authored or coauthored scientific papers
- Published in over 20 Scientific Journals
- Scientific Reviewer for 10 plus Scientific Journals
- Author or Coauthor of peer reviewed scientific papers on salmon, trout, steelhead, warm-water fishes, and shellfish in 40 year research career.

Dr. Gil Pauley	has lived on the lake since the mid-80s and has over 40 years of experience as a professional in the fisheries sciences. He said he reviewed three of the major documents the city used in developing the draft Shoreline Master Program. He said he identified concerns with each but was most troubled by the 2005 best available science report which contains a considerable amount of material relative to fisheries and associated recommendations that supposedly are of value to the salmon fisheries in the three lakes that fall under Bellevue's purview. The report contains errors of both omission and commission. Much of the information presented is based on scientific studies done for streams and saltwater environments, none of which have been shown to be directly applicable to the shorelines of the three Bellevue lakes. One of the major tenets of the best available science report is that it makes recommendations aimed at increasing the salmon populations of the lakes. However, many of the recommendations are based on information that is subjective, speculative, non-existent or actually erroneous with respect to the scientific literature. The report on page 7-43 states that available pertinent literature is limited, nonetheless inferred and hypothetical associations can be made based on available scientific literature. Many of the conclusions and recommendations related to the fisheries aspects in the report are in fact inferred and hypothetical. In many cases there is scientifically valid information that leads to different conclusions than those expressed in the best available science report. Many of the alternative views, however, were not presented which would seem to indicate the report was written with a specific agenda in mind. Examples include the recommended planting of large trees near the shoreline and the introduction of large woody debris along the shoreline, both of which champion the notion of increasing habitat and cover needed for young salmon. The problem is there no mention of the fact that the trees and woody debris will also provide hiding places for both smallmouth and largemouth bass which are predatory with respect to young salmon. There is ample scientific literature that indicates increases in the amount of large woody debris in lakes increases the population of predatory fish. The introduction of large woody debris in lakes and reservoirs is a common management tool used by many states to enhance the populations of smallmouth and largemouth bass. That information was not presented in the best available science report. Shoreline trees are mentioned as a contributing source of terrestrial insects to be utilized by the young salmon, however in large lakes terrestrial insects are not a major food source for young salmon, which predominantly eat aquatic insects and crustaceans on their way out to the ocean. The report vilifies overwater docks and structures as places that harbor fish species that prey on young salmon, but in reality the docks simply act as surrogates for natural cover. The use of flow-through decking on docks is a good idea and should be implemented. The degree to which predation under and around docks may impact the number of out-migrating salmon is unknown. The bass in Lake Sammamish and Lake Washington do not target out-migrating young salmon but merely appear to be opportunistic feeders on young salmon as they pass through the lakes on their way to the	**36.7** **36.7** **36.8** **36.9** **36.10**

	ocean. However, increased smallmouth and largemouth bass populations associated with large woody debris in the two lakes can reasonably be expected to lead to an increase in the total number of young salmon eaten. That view is also not included in the best available science report. The report on page 6736 states that in order to avoid habitat alterations and to stop the loss of shoreline area functions, bulkheads needing any type of maintenance, repair and retrofitting should be considered for removal and replacement with vegetative and large woody debris structures as shoreline protection alternatives. The statement is made that the recommendation is based on a conservative interpretation of the best available science. However, on the previous page the same report states that the effectiveness of the alternative shoreline armoring technique called bioengineering is unknown. Thus the report makes a recommendation that is far from conservative based on an unknown efficacy of the technique suggested. Removal and replacement would be very expensive for property owners, a fact that is not mentioned in the report. There are errors in the report that misstate facts. One example is on page 7-45 where it states that no studies were found that address the cumulative effects of in- and overwater structures in Lake Sammamish, Lake Washington and Phantom Lake shorelines. Yet on the very next page the report states that it is known that the effects of docks and piers and associated in- and overwater structures are incremental and cumulative in nature, then goes on to site Jennings 1999. The Jennings paper in fact has no mention of docks or piers; it is a study of rock riprap and concrete retaining walls. The conclusion reached is simply not valid. The Jennings report states that the use of rock riprap tapered to 45 degrees has much less impact on the environment than a vertical wall does, and it results in considerable specie enrichment among the crevices formed by the more complex habitat relative to a concrete wall. However, the positive aspect of rock riprap and its ability to dissipate wave action was not discussed in the best available science report relative to bulkheads. Multiple points of view exist on any given topic, but the more important the issue, the more important it is to have all opposing views presented. The promulgation of policy rules and regulations as they relate to science should pass the transparency test of being based on sound scientific principles; only then will the public view them as fair. The best available science report does not give enough scientific documentation to support many of the views it presents, which makes the recommendations speculative at best. The best available science frequently failed to present opposing science, alternative views and alternative options. It uses a considerable amount of non peer-reviewed science; it misinterprets and misquotes scientific citations; it makes conflicting statements and conclusions; and it makes conclusions and recommendations without supporting science. The Shoreline Master Program will affect many property owners, and the Commission's decisions should be fact based to assure the establishment of an equitable and effective program.	**36.11** **36.12**

TO: City of Bellevue Planning Commission **May 25, 2011**

RE: WA Sensible Shorelines Association – SMP Input

Good evening. I'm Dr. Martin Nizlek. I reside at 312 W. Lake Sammamish Pkwy NE in the City. I come before your commission tonight to provide a summary of WSSA's (WA Sensible Shorelines Association) input to the Shoreline Management Program update over the last two years.

My personal interest in this process was piqued in May of 2009 at an open house carried out by City staff. At that event it became readily apparent to many in attendance that it was staffs' intent to merely adopt, as the new SMP, the critical areas regulations, which had been adopted in 2006 with little notice to shoreline property owners. My subsequent review of public records confirmed that suspicion. **37.1**

My professional career as an engineer spanned over 30 years; working in high level government positions for several cities; teaching and conducting research as a university professor; and as a consultant, even providing services to Bellevue. I've worked closely with the City on a number of issues including plans for improvements to W. Lake Sammamish Pkwy as the president of the West Lake Sammamish Association. I mention this background only to underline my concerns surrounding the SMP update process.

37.2

As a shoreline resident of some 20 years, I've come to know the people who've been the stewards of the lake shorelands – seeing the investments they've made and care they've provided to what is essentially their backyards. Through this process, my eyes have been opened to the magnitude of problems and short regard provided by those who don't live along the lake and the impacts there from.

Similar concerns led to a number of residents on the 3 regulated Bellevue lakes to dig deeper these last several years, dedicating ourselves to understanding and involvement in the SMP and local government process. We've come to understand the concerns held by many, including those who've let us speak for them, since there is a great fear of retribution for speaking out.

As a group, WSSA has taken a high ground approach. We've attempted to be as professional as possible, even during very frustrating and limited opportunities to participate. We acknowledge the City for accommodating our March 2010 forum here at City Hall. However, many of the issues we addressed at that time have never been responded to or reflected in the ensuing process.

Since last year, a dozen of us have provided more than 60 presentations on topics ranging:

- FROM water quality TO high water levels
- FROM shoreline stabilization TO ecological function
- FROM the dangers of tall trees TO questions of cost versus effectiveness
- FROM the lack of program incentives TO concerns of trampled property rights

37.3

The material I provide you tonight, which I request be made part of the record of proceedings on this matter, contains the various submissions from our members to date.

I include one other item, both in hard copy and on the CD ROM containing our submissions and testimony. As I noted, WSSA has taken the high road. We've not simply come before you and whined. We've reached deep into our pockets to retain professionals to provide the Commission an independent perspective of the requirements and limitations of shoreline planning.

The Sensible Shorelines Plan (Sensible Plan), previously provided to you, was developed as an alternative to the massive and unwieldy product before you tonight. To supplement the Sensible Plan, I provide you a copy of legal citations supporting the Sensible Plan. We believe these underpin the possibility of creating a plan that is both sensitive to the environment and as important, one that recognizes we live here too. 37.4

But, we've not stopped there. We're again providing an independent review of what staff has placed before you tonight. Charlie Klinge, an attorney deeply aware of opportunities in as well as the limits placed by the State's shoreline code, will address you regarding the critique he has carried out for WSSA and all Bellevue shoreline residents.

We hope you'll consider this input and that of residents here to speak to you tonight.

Martin Nizlek, Ph.D. Civil Engineering, M.S. Industrial Engineering, Prof.Engr.-WA (retired)
312 W Lake Samm. Pkwy NE
Bellevue 98008

Supplemental Section
WSSA Sensible Shorelines Plan
Pertinent Citation Detail

May 2011

Washington
Sensible
Shorelines
Association

The Sensible Shorelines Plan (the Plan) draws upon the local discretion provisions of the Washington Administrative Code (WAC) found at chapter 173-26. The following materials provide the reviewer of the Plan pertinent sections of the State Guidelines, the Revised Code (RCW), and City Land Use Code that support the Plan.

These references are not intended to be a complete representation of the codes and regulations. Rather, the intent is to draw attention to provisions that support WSSA's development of more reasoned and balanced approach to management of Bellevue's urban shorelines.

Emphasis has been added through **boldface**, underlining, and/or colored text. For brevity, sections not immediately related to the Plan have been abbreviated (. . .)

For ease of access, click a link below to jump to a topic -
Local Discretion | Stabilization | Non-Conformity | Setbacks | Wetlands | Vegetation | Wildlife | Property Rights

Discretion Provided by Guidelines

37.5

WAC 173-26-171(3)(a) Authority, Purpose and Effects of Guidelines

(1) **Authority.** RCW 90.58.090 authorizes and directs the department to adopt "guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100" ...

(2) **Purpose.** The general purpose of the guidelines is to implement the "cooperative program of shoreline management between local government and the state." ...

... the guidelines have three specific purposes: To **assist** local governments in developing master programs; to serve **as standards** for the regulation of shoreline development **in the absence of a master program** along with the policy and provisions of the act and, to be used along with the policy of RCW 90.58.020, as **criteria for state review of local master programs** under RCW 90.58.090.

(3) Effect.

(a) The guidelines are guiding parameters, standards, and review criteria for local master programs. The guidelines allow local governments substantial discretion to adopt master programs reflecting local circumstances and other local regulatory and nonregulatory programs related to the policy goals of shoreline management as provided in the policy statements of RCW 90.58.020, WAC 173-26-176 and 173-26-181. The policy of RCW 90.58.020 and these guidelines constitute standards and criteria to be used by the department in reviewing the adoption and amendment of local master programs under RCW 90.58.090 and by the growth management hearings board and shorelines hearings board adjudicating appeals of department decisions to approve, reject, or modify proposed master programs and amendments under RCW 90.58.190. TOP PAGE

Bulkheads (Bulkheads Are Authorized to Protect Property from Erosion)

37.6

RCW 90.58.030(3)(e)(ii) Shoreline Management Definitions and Concepts

. . .

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. **The following shall not be considered substantial developments for the purpose of this chapter:**

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

WAC 173-26-231(3)(a)(iii)(C) Shoreline Modifications

. . .

(C) **An existing shoreline stabilization structure may be** <u>**replaced**</u> with a similar structure if there is a demonstrated need to protect principal uses or structures from **erosion caused by currents, tidal action, or waves.**

- The replacement structure <u>should be</u> designed, located, sized, and constructed to assure no net loss of ecological functions.
- Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure <u>unless the residence was occupied prior to January 1, 1992</u>, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.
- **Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.**
- **For purposes of this section standards on shoreline stabilization measures, "<u>replacement</u>" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. <u>Additions to or increases in size</u> of existing shoreline stabilization measures <u>shall be considered new structures</u>.**

RCW 90.58.100 (6) - Duties When Preparing Programs and Amendments

. . .

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures **against damage or loss due to shoreline erosion.** The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards **shall** provide for methods which achieve **effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion**.

WAC 173-27-040(2)(c) Developments Exempt from Substantial Development Permits

. . .

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars ...

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements...

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife.

TOP PAGE

Non-Conformity (Non-conforming Structures Are Protected) 37.7

WAC 173-27-040(2)(b) Developments Exempt from Substantial Development Permits

. . .

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars...

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

WAC 173-27-080(2) & (3) - Non-Conforming Use and Development Standards

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means ...

(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program . . .

(5) A structure for which a variance has been issued shall be considered a legal nonconforming structure . . .

(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. . . .

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

(8) If a nonconforming development is damaged . . .

(9) If a nonconforming use is discontinued for twelve consecutive months . . .

(10) An **undeveloped** lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

WAC 197-11-800(3) - Categorical Exemptions

The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

(1) Minor new construction -- Flexible thresholds. . .

(2) Other minor new construction . . .

(3) **Repair, remodeling and maintenance activities**. The **following activities shall be categorically exempt:** The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only **minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks).** The following maintenance activities shall not be considered exempt under this subsection. . .

TOP PAGE

37.8

Setbacks

2005 Review of BAS (Best Available Science) – Shorelines (The Watershed Co.)

Section 7.2.1 Lake Washington

. . .

The shoreline of Lake Washington, including Bellevue's shoreline area, is extensively developed (Weitkamp & Ruggerrone, 2000; Toft, 2001) . . .

Section 7.2.2 Lake Sammamish

. . .

With this degree of shoreline armoring, a **significant amount of aquatic and riparian has been physically eliminated** and many shoreline processes and functions are currently precluded.

. . .

these alterations limit Lake Sammamish's functions and values within the Bellevue shorelines and the Lake Sammamish watershed.

TOP PAGE

Wetlands

WAC 173-201A Water Quality Standards for Surface Waters... -020 Definitions 37.9

. . .

Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities,

TOP PAGE

37.10

Vegetation Conservation and Tree Retention

WAC 173-26-221 - General master program provisions.

• • •

(5) Shoreline vegetation conservation

(a) Applicability . . .

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, **vegetation conservation standards do not apply retroactively to existing uses and structures**, such as existing agricultural practices.

(b) Principles . . .

The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. **Vegetation conservation should also be undertaken to protect human safety and property**, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs **shall include**: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and **to reduce the hazard of slope failures or accelerated erosion.**

• • •

Woody vegetation normally classed as **trees may not be a natural component of plant communities in some environments,** such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height.

Local governments **should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology** and conserve sufficient vegetation to maintain them. **Such vegetation conservation areas** **are not necessarily intended to be closed to use** and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

LUC 20.20.900 - Tree Retention and Replacement.

A. Purpose.

Retention of significant trees as required by this section is necessary to maintain and protect property values, to enhance the visual appearance of the City, to preserve the natural wooded character of the Pacific Northwest, to promote utilization of natural systems, to reduce the impacts of development on the storm drainage system and water resources, and to provide a better transition between the various land uses permitted in the City.

B. Applicability.

The requirements of this section shall be imposed any time a permit, approval, or review including land alteration or land development including subdivisions, short subdivisions or planned unit developments, a change in lot coverage, or a change in the area devoted to parking and circulation is required by the Bellevue City Code or Land Use Code. Subsection F of this section shall apply to permits for new single-family structures and for **additions to impervious surface areas that exceed 20 percent** when located on a single-family lot developed with a residential use. Subsection E of this section applies to the removal of any significant trees in the R-1 Land Use District located in the Bridle Trails Subarea.

. . .

F. **Retention of Significant Trees for New or Expanding Single-Family Structures** Excluding Single-Family Structures Located in the R-1 Land Use District in the Bridle Trails Subarea.

1. **Site Area. For new single-family structures or additions to impervious surface areas that exceed 20 percent when located on a single-family lot developed with a residential use, the applicant shall retain a minimum of 30 percent of the diameter inches of significant trees** existing in the site area; provided, that alder and cottonwood trees' diameter inches shall be discounted by a factor of 0.5. In applying the requirement for retention of significant trees, the Director shall consider the preservation of the following types of significant trees a priority:

   a. Healthy significant trees over 60 feet in height;
   b. Significant trees which form a continuous canopy;
   c. Significant trees which contribute to the character of the environment, and **do not constitute a safety hazard;**
   d. Significant trees which provide winter wind protection or summer shade;
   e. Groups of significant trees which create a distinctive skyline feature;
   f. Significant trees in areas of steep slopes or adjacent to watercourses or wetlands; and
   g. Significant trees located within the first 20 feet adjacent to a property line.

TOP PAGE

37.11

Guidance on Wildlife

WAC 365-190-130 - Fish and Wildlife Conservation Areas

(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species **in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created.** This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

• • •

TOP PAGE

37.12

Guidance on Property Rights

State Attorney General - Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property[1]

- A government regulation that is so severe in its impact that it is the functional equivalent of **condemnation requires the payment of just compensation**.
- The Washington Constitution provides that **"[n]o private property shall be taken or damaged for public or private use without just compensation."**
- In Washington, property generally **may be condemned only for a public use**.
- In general, zoning laws and related regulation of land use activities are lawful exercises of police powers that serve the general public good. However, the state and federal constitutions have been interpreted by courts to recognize that **regulations purporting to be a valid exercise of police power must still be examined to determine whether they unlawfully take private property** for public use without providing just compensation.

  • • •

- A regulation must be analyzed for its economic impact on the property as a whole, not just the portion being regulated.

  • • •

TOP PAGE

[1] Link - Attorney General's Guidance - http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf

Dr. Marty Nizlek	submitted to the Commission a CD containing two-plus years worth of testimony and input from the Washington Sensible Shorelines Association and asked that it be made part of the official record. He also provided the Commissioners with a list of specific citations from the RCW, the WAC and the Land Use Code in support of the plan developed by the Washington Sensible Shorelines Association. The citizens have taken the high road during the process; they have appeared before the Commission on more than 30 different occasions, and they have diligently reviewed the massive code brought forward by the staff. He said he has lived on the lake for many years and has never before felt that he and his neighbors count for nothing in the eyes of the city. To have turned the staff loose with direction to pull every conceivable and inconceivable regulation into the shoreline program, and then to add that what the residents cannot defend and get out is a sensible plan is ridiculous. He turned the rest of his time over to Mr. Charley Klinge.	**37.13** **37.14**

GS&K GROEN STEPHENS & KLINGE LLP
ATTORNEYS AT LAW
11100 N.E. 8TH STREET, SUITE 750
BELLEVUE, WASHINGTON 98004

JOHN M. GROEN
RICHARD M. STEPHENS
CHARLES A. KLINGE
SAMUEL A. RODABOUGH
BRIAN D. AMSBARY

TELEPHONE
(425) 453-6206
FACSIMILE
(425) 453-6224

Comments to Planning Commission May 25, 2011

My name is Charlie Klinge, business address 11100 NE 8th Street and home address 13900 SE 46th Street here in Bellevue.

I am the attorney representing the Washington Sensible Shorelines Association.

WSSA tasked me to review the Draft SMP regulations and make line by line comments addressing any and all concerns. Our Detailed Comments are 97 pages long and contain 400 individual comments on specific provisions of the Draft SMP.

I am not a novice attorney. I have 20 years' experience as a land use attorney and 15 years working with Washington Shoreline Master Programs.

In summary, and based on all my experience, the Draft SMP is fundamentally flawed on numerous levels. The Draft SMP is too big, the regulations are too complicated, and staff has tried to do way too much. **38L.1**

The biggest fundamental flaw is that the Draft SMP includes incredibly detailed regulations that govern every minute aspect of home construction. The purpose is to accomplish the newest planning ideals. This approach might work somewhere else maybe in a brand new City with no development. But, this approach does not work in Bellevue where the entire shoreline of the three regulated lakes is already developed as urban neighborhoods. You can't turn the clock back 200 years and retroactively create sensitively designed homes that harmonize with the lake, and you especially can't do that on small existing lots. State law specifically does not require such a radical approach. We are dealing with practical reality, not an ideal planning experiment. The Draft SMP fails in this regard. **38L.2** **38L.3**

Staff justifies this flawed approach by reliance on flawed science. Dr. Pauley makes it clear that the City used stream science and salt water science to decide what to do on lake shorelines. The City ends up with so called ecological functions that conflict which each other and would actually harm salmon if followed. Homes on the shorelines have done little to nothing to harm salmon. **38L.4** **38L.5**

However, non-native bass do like to hang out under docks on Lakes Washington and Sammamish where they occasionally eat small salmon. The strict dock regulations are actually needed to fix a problem caused by non-native fish—docks are not a problem for salmon except for the bass. **38L.6**

The Draft SMP calls a landscaped yard a Vegetation Conservation Area, a VCA, or better known as a buffer. Then, the regulations presume that the yard functions as a natural shoreline. That in turn justifies shoreline enhancement to compensate for the assumed harm to the VCA no matter how trivial the project. But, the premise is wrong. Building something in a landscaped yard or on a patio is not the same as clearing native vegetation from a natural site. **38L.7**

When regulations are disconnected from fixing actual problems what you get is effectively: A Solution in Search of a Problem. This situation has another name: interference with property rights or a taking of property without just compensation. Justice Scalia on the United States Supreme Court said that when land use regulations impose conditions that are unconnected to any legitimate harm, the result is "out and out extortion." The high court declared as unconstitutional regulations that failed the nexus and rough proportionality tests in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. State cases and state law go further and impose the burden on government to demonstrate an adequate connection between harm and mitigation. That is the problem here. **38L.8** **38L.9**

The Comment Letter I have submitted on behalf of WSSA contains a cover letter and an attached table of the Detailed Comments. The letter has some important general comments and then explains Categories of Concern, namely Vague or Confusing Regulations; Inconsistent With Shoreline Guidelines; Failure to Respect Exempt Activities; Expensive Permitting Requirements; Unnecessary Micromanaging; Improper Incorporation of Outside Materials; and, Interference with Property Rights. Each of the 400 Detailed Comments is lumped in to one or more of these categories, and some provisions run afoul of 4-5 of these Categories of Concern.

WSSA looks forward to working with the Planning Commission to address these issues and to create a Final SMP that represents a reasonable and responsible approach to shoreline planning and regulation.

GS &K GROEN STEPHENS & KLINGE LLP
ATTORNEYS AT LAW
11100 N.E. 8TH STREET, SUITE 750
BELLEVUE, WASHINGTON 98004

JOHN M. GROEN
RICHARD M. STEPHENS
CHARLES A. KLINGE
SAMUEL A. RODABOUGH
BRIAN D. AMSBARY

TELEPHONE
(425) 453-6206
FACSIMILE
(425) 453-6224

May 25, 2011

Hal Ferris
Chair, Bellevue Planning Commission
City of Bellevue
Post Office Box 90012
Bellevue, WA 98009

RE: Comments on Draft Shoreline Master Program Regulations on behalf of the Washington Sensible Shorelines Association

Dear Chair Ferris and Planning Commissioners:

This firm represents the Washington Sensible Shorelines Association (WSSA) and this letter and attachments provide comments on the Draft Bellevue Shoreline Master Program (Draft SMP).

These comments are set forth in the three parts. First, General Comments are provided in this letter addressing overall issues. Second, this letter defines and explains Categories of Concern. Third, Detailed Comments to individual provisions in the Draft SMP regulations are attached and provided in a table format.

The Detailed Comments provide line by line analysis of the Draft SMP regulations, and are intended to be considered side by side with Draft SMP. In addition, each of the comments is grouped into one or more of the Categories of Concern for easier reference. Thus for example, comments indicating that a provision is Vague or Confusing are marked VC in the Categories of Concern column. A comment indicating that a provision interferes with Property Rights is marked PR, etc. We hope that the Categories of Concern will assist the Planning Commission and Staff to sort through the hundreds of Detailed Comments.

That is correct. The Detailed Comments consist of about 400 individually numbered comments. Some comments point to minor changes needed to clarify regulations, but a substantial number of comments explain severe problems in the Draft SMP regulations. WSSA contends that a major overhaul is needed to create a Draft SMP that fairly balances development on the shorelines and protection of property rights, while addressing the actual environmental concerns to promote clean water and healthy salmon populations. **38L.10**

WSSA looks forward to working with the Planning Commission to address these issues and to create a Final SMP that represents a reasonable and responsible approach to shoreline planning and regulation.

GENERAL COMMENTS

Background. WSSA has already completed the Sensible Plan that promotes a better SMP by proposing changes on key issues. These comments, of necessity, focus on the problems in the Draft SMP and build on the last two years of work by WSSA, its members, its consultants, and its legal counsel. Unfortunately, as WSSA has warned for the last year, the staff was creating a Draft SMP that is too big, too complicated, tries to do too much, and would be expensive and complex to implement. The result is even worse than expected because in many respects the Draft SMP goes beyond even the existing harsh and unfair critical area rules. The depth of the problem is reflected in the attached Detailed Comments, which number about 400. While some of the comments require minor or relatively minor clarifications, too many of the comments detail extensive problems that can only be resolved through a major overhaul and re-write of the Draft SMP. **38L.11**

Flawed Science. The City's own studies establish that the City's shorelines were altered long ago and will never function as a natural shoreline: **38L.12**

> The riparian shoreline of Lake Washington is highly altered from its historic state. Current and likely future land-use practices preclude the possibility of the shoreline functioning as a natural shoreline to benefit salmonids.[1] **38L.13**

Similar statements are made about Lake Sammamish and Phantom Lake. The Ecology Shoreline Guidelines are clear that vegetation conservation—buffers—are not required at shorelines that have already been altered. The Guidelines state: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures."[2] Consistent with this rule, Ecology approved Redmond's SMP without a buffer or vegetation conservation requirement. **38L.14**

Importantly, as explained by fish expert Dr. Gil Pauley, the City reports improperly applied stream and salt water science to lake shorelines. Thus, the identified ecological functions are flawed. Large woody debris will hurt, not help salmon, so planting or protecting trees on the shoreline (in hopes that they will fall in the water in 50 years) accomplishes nothing. Terrestrial insects are not a major food source for salmon in large lakes so overhanging vegetation provides no benefit. Dr. Pauley supports flow through decking on docks because the purpose of open decking is to reduce salmon predation by bass. **But, bass are a non-native fish to these lakes,** so the regulations are responding to non-native fish predation and not to natural conditions. Under natural conditions with no bass and no bass predation, the docks and shading would create no concern. When asked by the Planning Commission, the staff was unable to articulate an **38L.15**

---

[1] 2005 Best Available Science (BAS) Review, § 7.2.1, pp. 7-5 to 7-7, § 7.2.2, pp. 7-7 to 7-9 (similar statement for Lake Sammamish) § 7.2.3; *see also* Draft Shoreline Analysis Report § 5.1.3, page 79 (same statement for Lakes Washington and Sammamish).

[2] WAC 173-26-221(5)(a)

ecological benefit for larger setbacks. Despite these undisputed facts, the Draft SMP regulations seek to retroactively restore the existing developed shoreline into a so-called "natural" shoreline vegetated with plants and large, view-blocking trees. **38L.16**

There are other flaws. The OHWM study was flawed and was not even accepted by the Department of Ecology. As explained in the Detailed Comments, the focus on impervious surface is largely misplaced because roof water is clean and Lakes Washington and Sammamish are receiving waters so shoreline properties are allowed to discharge water to the lakes without detention or restriction. Another problem is creating bulkhead regulations based on the flawed premise that almost all properties have bulkheads below OHW causing harm. Yet, Dallas Evans debunked this broad generalization for Lake Sammamish by personally assessing every property. The City must not impose regulations untethered to any scientific justification because to do so is inconsistent with the Shoreline Guidelines and also interferes with property rights. **38L.17** **38L.18** **38L.19** **38L.20**

The Shoreline Guidelines summarize the utilization of science by stating that local jurisdictions shall, "base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available."[3] At the same time, the Shoreline Guidelines recognize and respect that other information may be very important in adopting an updated SMP. The same provision of the Guidelines states as follows: **38L.21**

> The requirement to use scientific and technical information in these guidelines **does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties** as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201(3)(b).[4]

This Planning Commission has welcomed citizen input consistent with this Guideline. The Guidelines then clarify the role of the local jurisdiction in sorting through all the information collected, including the "information, experience, and anecdotal evidence provided by interested parties." Namely, the local jurisdiction is to make a "reasoned, objective evaluation" of the conflicting data: **38L.22**

> Where information collected by or provided to local governments conflicts or is inconsistent, **the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.**[5]

[3] WAC 173-26-201(2)(a)
[4] WAC 173-26-201(2)(a) (emphasis added)
[5] WAC 173-26-201(2)(a)

In summary, WSSA has provided "the most current, accurate, and complete scientific or technical information." WSSA has also provided substantial additional information that can be relied on by the Planning Commission. Finally, to the extent there is a conflict, the Commission has adequate information to support the Sensible Plan and other needed changes. **38L.23**

Existing Development Versus New Development. The regulations have applicability provisions stating that the regulations "apply to all development" or "apply to all residential uses and developments." However, the regulations are not clear, or not clear enough, that many of the regulations apply only to new construction on vacant lots and not to existing homes or existing sites. Existing homes were not constructed in compliance with the newly proposed, highly detailed design and site planning regulations. This creates two highly problematic concerns. First, if not clarified, this approach would cause essentially all existing homes to become nonconforming for reasons that are both minor and potentially impossible to correct. And, this would occur despite other rules that seek to avoid nonconformities, such as setback requirements that keep existing homes conforming by "carving out" the home footprint (i.e., the footprint exception). **38L.24**

For example, the Draft SMP contains proposed regulations stating that residential uses "shall comply" with new rules for site planning, parking, driveways, and for a myriad of other requirements. Whether an existing home complies with the proposed rule that "parking and driveways shall be the minimum necessary" is on the one hand totally vague, but as applied to existing development, impossible to determine. The second problem is that even if clarified to apply only to new construction at existing sites, the proposed rules are still highly problematic because it is typically impossible, or at least prohibitively expensive, to change the basic site planning aspects of existing sites. **38L.25** **38L.26**

Shoreline Regulations Versus Other City Regulations. The State SMA intends the regulations in the Shoreline Master Program to act as a set of zoning regulations that address planning issues related to development. The State SMA was never intended to regulate construction level issues such as erosion control, building permit details, and other construction issues. The Draft SMP creates confusion in some places by not clarifying that these other City construction codes are not intended to be part of the SMP. Any provision that is **part of the SMP** is then part of any shoreline permit which is then subject to review by the State Department of Ecology and potential appeals to the State Shorelines Hearings Board. This improper approach transforms planning level shoreline permits into highly detailed construction permits. The proper approach is to clearly state that compliance with other City regulations is required, but that those regulations are **outside of the SMP.** The City should, however, take credit for the benefits of these construction level requirements by listing compliance with these non-shoreline regulations as an SMP policy. **38L.27**

Incorporation of Outside Materials. Numerous provisions directly or indirectly incorporate rules, guidelines, or other reference material that exist outside of the SMP. Some of these references are to other City codes (previously adopted by ordinance), but many other references are to City standards or guidelines (not adopted by ordinance) and even to non-City materials. **38L.28**

See list attached as Appendix 1. Then, many of these provisions add the phrase "now or hereafter amended." This approach is flawed for numerous reasons. The City is not complying with the specific requirements in State law for including other documents by reference, namely the other documents must be consistent with the Shoreline Guidelines and comply with the following: **38L.29**

> Shoreline master programs may include other policies and regulations by referencing a specific, dated edition. When including referenced regulations within a master program, local governments shall ensure that the public has an opportunity to participate in the formulation of the regulations or in their incorporation into the master program, as called for in WAC 173-26-201 (3)(b)(i). In the approval process the department will review the referenced development regulation sections as part of the master program. A copy of the referenced regulations shall be submitted to the department with the proposed master program or amendment. If the development regulation is amended, the edition referenced within the master program will still be the operative regulation in the master program. Changing the referenced regulations in the master program to the new edition will require a master program amendment.[6]

The Draft SMP does not cite a specific dated edition. The other documents are not available as part of the SMP Update process, which interferes with public participation. Incorporating future amendments, "or hereafter amended," is not allowed because that would require SMP amendments approved by Ecology. The Growth Management Hearings Board has ruled that the City must determine that incorporated materials comply with the Shoreline Guidelines. Another problem is that some of these incorporated materials have never been previously reviewed by the Planning Commission or City Council, and so careful review is necessary. Finally, some of the incorporated materials are in the form of "guidelines" and not rules so trying to apply them as SMP regulations is flawed. As just noted, some references to other City regulations and possibly engineering standards can be corrected by making it clear that those regulations are **outside of the SMP.** However, many other guidelines and materials cannot be corrected in that manner. As explained in the detailed comments, many of these incorporated guidelines and materials simply add confusion and complication, and should be eliminated. **38L.30**

SEPA Comments. These comments and all other comments by WSSA also constitute comments to the undated SEPA determination, specifically the Determination of Non-Significance. The SEPA DNS references the Draft and Final Critical Areas EIS, but those documents incorporate the flawed science complained about herein, and overstate the impacts on shoreline functions. The SEPA Determination is flawed by failing to make any connection between the Critical Areas EIS and the Shoreline Master Program. At a minimum, some **38L.31**

[6] WAC 173-26-191(2)(b)

analysis would be needed to conclude that the environmental impacts related to the SMP are fully addressed in the Critical Areas EIS, but no analysis is provided. No additional comments will be made at this time, due to this inherent flaw.

Comments for the Record. Under separate cover, WSSA is resubmitting a disk of dozens of documents previously submitted to the Planning Commission or City Council along with an index to ensure that all such documents are considered part of the City's official record of materials in the SMP Update process.[7] WSSA hereby incorporates by reference every document submitted, and all verbal comments delivered, at any Planning Commission or City Council meeting related to the SMP Update process, including but not limited to, all such written and oral comments made at any meeting with Shoreline Master Program Update or similar reference on the Agenda. WSSA also hereby incorporates by reference letters from the undersigned to the Planning Commission and/or City Council regarding the 2006 code amendments, which complained about the impropriety of that process and the lack of any effort to ensure public involvement by any shoreline property owners.

CATEGORIES OF CONCERN

This section explains Categories of Concern. The Detailed Comments in the attached table are notated by reference to these Categories of Concern as a shorthand way to classify the types of problems. Any comment that has two or more categories of concern listed should merit special attention, but even a single concern needs to be addressed.

Avoid Vague or Confusing Regulations (VC). A key principle of land use regulations is clarity. The regulations should be clear enough for citizens to understand, and should not be written in planner-speak that can only be deciphered by consultants and attorneys, if at all. Vague and confusing regulations increase permitting costs and delays as consultants and City staff attempt to figure out what to do. Confusing also applies to those regulations that are inherently complicated. Vague or confusing rules cause inconsistent implementation as different staff people come to different conclusions about the proper interpretation. Regulations can be so vague as to violate constitutional principles of due process and fairness. Regulations identified as Vague or Confusing will be designated as **VC**.

Inconsistent With Shoreline Guidelines (I). The City's preparation of the Draft SMP is guided by the Shoreline Guidelines WAC Chapter 173-26, Part III. However, some provisions in the Draft SMP are inconsistent with, or misread, the Shoreline Guidelines in a manner that creates unnecessary and excessive regulations that go beyond what is required or are otherwise problematic. Some provision are inconsistent with the Shoreline Management Act. Regulations that are inconsistent with the Act or Shoreline Guidelines are marked as **I.**

[7] To the extent any document on the disk was not was not previously, WSSA intends that it also be made a part of the record. And, to the extent a document was previously submitted, but is not on the disk, WSSA intends that those other documents also be part of the record.

Respect Exempt Activities (Ex). State law recognizes the following as **exempt activities:** maintenance and repair, construction and renovation of owner occupied single family homes and appurtenances, bulkheads for single family properties, and new or expanded dock expansions costing no more than $10,000. State law recognizes that these activities will not cause adverse impacts on the shoreline and should go forward without additional permitting hurdles. **Exempt activities** should be exempt from the expensive and time consuming shoreline permit requirements, although these activities must still obtain building permits and comply with standard construction requirements such as erosion control. The Draft SMP does not respect the distinction between **exempt activities** and those that clearly require one of several types of **shoreline permits**. Exempt activities should proceed without complex application requirements that only add to the cost and delay in constructing needed improvements that will have no measurable adverse impact on the shoreline environment. Regulations that interfere with Exempt Activities are marked as **Ex.**

Avoid Expensive Permitting Requirements ($). Another problem with land use regulations occurs when new studies are required that add to the expense and delay in obtaining permits. Special studies that require biologists or engineers cost thousands of dollars each. Then, the City fees to review special studies quickly increase into the thousands because the City charges substantial hourly rates to review applications. A home addition, bulkhead replacement, or dock renovation should not require dozens of hours of City staff time and costs to homeowners of potentially $10,000 or more in consultant and City fees. For example, requiring expensive studies for **exempt activities** improperly imposes permitting burdens that State law has precluded. In addition, the Shoreline Guidelines specifically declare that **exempt activities** need not demonstrate any net loss of ecological resources on a project basis, which is the only purpose of special studies. Regulations that add arbitrary and unnecessary expense are marked as **$**.

Unnecessary Micromanaging (M). Some provisions are not tethered to any substantial basis and become unnecessary micromanaging of building or site design, or other issues. These provisions may not be confusing, but they are simply overreaching and make design difficult without any substantial benefit for the shoreline. Regulations that constitute unnecessary micromanaging are marked as **M**.

Improper Incorporation of Outside Materials (Inc). Numerous provisions directly or indirectly incorporate rules, guidelines, or other reference material that exist outside of the SMP. Some of these references are to other City codes (adopted by ordinance), but some references are to non-City materials. Then, many of these provisions add the phrase "now or hereafter amended." This approach is flawed for numerous reasons as set forth above. Incorporation of outside materials is designated as **Inc.**

Avoid Interference with Property Rights (PR). Shoreline property owners have vested property rights, based on decades of prior City policies and actions, that their homes could be maintained and renovated based on Bellevue's standards. These clear and long held expectations, combined with the lack of any showing of harm, strongly supports the continued right to use and enjoy these properties without interference. Protection of property rights

requires that regulations must be tied to a specific, identified impact of a development on the public. A generalized or assumed impact is insufficient to support conditions on development. Put another way, there must be a **nexus** between the impact and the mitigating condition and the mitigating condition must be **roughly proportional** to the impact. Without these required connections, mitigation measures become unconstitutional government "extortion" according to the United States Supreme Court.[8] Additionally, the regulations cannot go so far as to prevent reasonable development of property, which is partly measured in comparison with the development allowed by similarly situated properties. Regulations that interfere with property rights are marked as **PR**.

DETAILED COMMENTS

The attached Detailed Comments (Appendix 2) only review the Draft SMP regulations and not the Policies or the Restoration Plan. WSSA agrees with statements made by Planning Commissioners that the Policies need to be reconsidered after decisions are made on the regulations. WSSA's position is that the Policies are far too detailed. If the Policies were general and much shorter, then the possibility of conflicts would arise rarely and make the drafting of Policies far easier. The Restoration Plan is important, but will be addressed by others or at a later time. However, one note is needed here. The Restoration Plan recognizes that restoration will "primarily" occur on public property, but also by private owners taking voluntary actions or "through re-development proposals." (p. 2) This last reference could indicate an intention to make restoration mandatory, but that is inconsistent with the Shoreline Guidelines and property rights because only mitigation can be required, not restoration.

The attached Detailed Comments are in a Table with four columns. The first column provides numbering for the individual comments. The second column provides a Reference to the Code provision section number and/or page number within the Draft SMP. The page numbers are based on the separate page numbering for various sections. The third column provides the comments, but these are best understood when read side by side with the Draft SMP, otherwise the comments read alone will be a bit cryptic. The fourth column provides the notation to Categories of Concern described above and a legend is provided for the abbreviations.

Please note that the attached comments are made to the March version of the Draft SMP and the reference column uses the March version page numbers. The Staff has released a new version for the Public Hearing called May 2011 Draft SMP. Staff explained that corrections and clarifications were made to the March version to create the May Public Hearing version, but it is unfair and unrealistic to expect the public to comment on the new version after starting review of the March version. No effort has been made to reconcile changes or correct page references if any are needed. We assume that the staff can sort out any changes when staff provides the Commission with its response to comments.

[8] *Nollan v. California Coastal Comm., Dolan v. City of Tigard.*

CONCLUSION

It should be noted that this letter and the Detailed Comments do not attempt to provide extensive legal citations because that was previously done in numerous submittals including the Review and Analysis of Major Issues document, the WSSA Installment documents, and the WSSA Sensible Plan. The main purpose here is to provide a road map for the Planning Commission to begin to understand the flaws in this highly complex regulatory scheme. The Commission needs to focus on the real impacts and reject the junk science that is being improperly relied on to attempt to justify the regulations in the Draft SMP. Once that is done, the Commission can move on to the work of fairly balancing real environmental concerns and protection of property rights. WSSA looks forward to working with the Planning Commission to create a Final SMP that represents a reasonable and responsible approach to shoreline planning and regulation.

Thank you for considering these comments and please include these letter comments as part of the record.

Sincerely,

GROEN STEPHENS & KLINGE LLP

Charles A. Klinge
klinge@GSKlegal.pro

CAK:lch
Attachments

cc: WSSA, attention Martin Nizlek

APPENDIX 1

Washington Sensible Shorelines Association

Detailed Comments on Bellevue Draft SMP

No.	Ref.	Comments	Concern Category	
		Shoreline District Overlay – Part 20.25E.LUC **I. AUTHORITY**		
		20.25E.010 General		
1	**20.25E.010**	A. Authority Rule: This provision points to the Shoreline Management Act (SMA or the Act) and highlights the purpose as protection of shoreline natural resources and public health, safety, and welfare. This statement should also include the other two important principles of the SMA, namely managing development on the shorelines and protection of property rights. The law is clear that the purpose of the SMA is to manage development of shorelines in a manner that balances protection of resources with use of the shorelines, and doing so while respecting property rights. The SMA recognizes and accepts development of shorelines within the system of coordinated planning in shoreline areas: > [T]he SMA does not prohibit all development in the shoreline. Rather, its purpose is to allow careful development of shorelines by balancing public access, preservation of shoreline habitat and private property rights through coordinated planning, i.e., shoreline master plans which must be approved by DOE.	**PR**	**38T.1**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights
I – Inconsistent w/ WAC/RCW Inc – Incorporation M – Micromanaging

No.	Ref.	Comments	Concern Category	
		It should be pointed out that the City knows this point very well. The quoted language comes from an appellate case in which the City of Bellevue made precisely these arguments to defend the approval of what became the Residence Inn at SE 8th even though the project destroyed natural wetlands in the Mercer Slough (*Overlake Fund and City of Bellevue v. Shoreline Hearings Bd.*, 90 Wn. App. 746, 761 (1998) (citing RCW 90.58.020). In this regard, the SMA mandates that shoreline property owners have the right to certain permissible uses of property and/or priority shoreline development. In particular, single family use is recognized as a priority use in the SMA.		
2	**20.25E.010**	B. Shoreline Master Program Elements This provision which lists eight parts of the SMP seems innocuous, but the provision creates confusion and uncertainty because it can be read as incorporating all these documents into the SMP. To the extent that is the intent, the Critical Areas Overlay District code is improperly being incorporated because that code is not before the Planning Commission, has not been discussed, and needs to be completely reviewed for consistency with the Shoreline Guidelines. Further, it is unclear regarding the purpose and intent in listing the Shoreline Inventory and Characterization. That document is more properly described as a background document and not policies or regulations, and many of the conclusions in the document are seriously disputed by science and other information put forward by WSSA, but never addressed by the Staff or Planning Commission.	**VC**	**38T.2**
3	**20.25E.010** **p. I-2**	C. Scope 1. Applicability Unfortunately, the Scope provision creates more questions than answers. The provision creates confusion by referring to "development and uses" and to shoreline permits "or approval" which terms are not sufficiently defined. Exempt	**VC**	**38T.3**

No.	Ref.	Comments	Concern Category	
		activities should also be mentioned.		
4	**20.25E.010**	a. This provision should clarify that other City code provisions governing construction level details are outside the SMP, but to the extent that this provision creates a mixed governing system it is improper as either incorporating outside materials or regulating shoreline use and development with non-SMP regulations.	**VC**	**38T.4**
5	**20.25E.010**	b. i. Non-Critical Area Conflicts. This provision states that the provision with greater protection of the shoreline governs. This provision is improper for two reasons. First, the conflicts should be identified and removed. It is often confusing, difficult, and arbitrary to determine whether a conflict exists and whether one provision is more protective. Two, the SMA does not support this approach. The SMA supports management of development on the shorelines that balances development/property rights and protection of natural resources. This provision fails to recognize that fundamental purpose in the SMA.	**VC, PR**	**38T.5**
6		ii. Critical Area Conflicts. This provision states that the provision with greater protection of critical areas governs. This provision is improper. This update process requires observance of the SMA principles, not the principles of the GMA including critical areas. First, the conflicts should be identified and removed. It is often confusing, difficult, and arbitrary to determine whether a conflict exists and whether one provision is more protective. Two, the SMA does not support this approach. The SMA supports management of development on the shorelines that balances development/property rights and protection of natural resources. This provision	**VC, PR**	**38T.6**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		fails to recognize that fundamental purpose in the SMA.		
7		c. This provision is helpful in listing regulations that are inapplicable, but then is confusing in stating generally that all other regulations apply.	**VC**	**38T.7**
8	**20.25E.010**	2. Jurisdiction This jurisdictional provision should use the word "shorelands" to describe the area within 200 feet of OHWM as defined in the SMA.	**VC**	**38T.8**
9		Floodways. This provision improperly claims jurisdiction of "floodways" and "floodplains" of Lakes Washington and Sammamish, and Phantom Lake. This is barred by the SMA at the definition of floodways in RCW 90.58.030(2)(b) which states: > Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. Each of the three lakes has outlet control devices and systems that are designed to avoid flooding of the private properties on the lake shorelines. The Army Corps of Engineers controls and manages the outlet for Lake Washington. The Corps controls and King County manages the outlet for Lake Sammamish. The City controls and manages the outlet for Phantom Lake (under the easement granted to the City for that purpose). Each of these jurisdictions is directly responsible for any flood caused damage to shoreline properties due to the control and management of the outlet controls, and therefore each jurisdiction has a duty to	**I, VC, PR**	**38T.9**

No.	Ref.	Comments	Concern Category	
		avoid flooding. Therefore, floodways of these lakes are not part of shoreline jurisdiction, and floodplain is defined in the SMA to mean the floodplain "contiguous" to the floodway, so without a floodway there is no floodplain.		
10		e. There is no inner harbor line on Lake Sammamish.	**VC**	**38T.10**
11	**20.25E.010** **p. I-3**	D. Environment Designations 1. Aquatic The Aquatic designation applies to the lakes themselves. The purpose here is too narrow and ultimately confusing because it vaguely states "to protect, manage, and restore the unique characteristics and resources." Yet, the SMA, the Shoreline Regulations, and the draft SMP make it clear that the water is the location of recreational docks and marinas whether for single family use or full scale marinas. Recreation is a priority use in the SMA. This provision should be broadened to state that the purpose is to promote recreational docks and marinas, while balancing protection of resources.	**I, VC, PR**	**38T.11**
12	**20.25E.010**	4. Shoreline Residential a. The purpose is properly drafted and is consistent with the SMA and the Shoreline Guidelines, namely to "accommodate" residential development along the shoreline.		**38T.12**
13	**20.25E.010**	5. Shoreline Residential Canal The draft distinguishes Shoreline Residential and Shoreline Residential Canal, but the basis for the different designations is not well supported and does not sufficiently justify later included regulations that provide more restrictions in the	**VC**	**38T.13**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		SR Environment. Specifically, describing the SRC as low level ecological functions while describing SR as moderate to low is inconsistent with the heavily development nature of the SR shorelines.		
14	**20.25E.010**	6. Recreational Boating The WAC Shoreline Guidelines utilizes the description High Intensity for marinas. The Recreational Boating designation is inherently confusing because single family homes also include recreational boating as a primary activity. The designation should be High Intensity to be consistent with the WAC or Marina.	**VC, I**	**38T.14**
15	**20.25E.010** **p. I-6**	E. Maps This provision improperly contains a vague provision that could allow staff too much discretion to demand "site specific" studies and attempt to redesignate properties into more restrictive designations. The best approach is to use accurate maps. The WAC Shoreline Guidelines provide the following advice at WAC 173-26-211(2)(b): > An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a	**VC, $**	**38T.15**

No.	Ref.	Comments	Concern Category	
		mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map. The City has clearly mapped the designations to the individual parcel level, so the only basis to change the designation would be an error, and any change to an individual private parcel would necessarily require due process protections.		
16	**20.25E.010**	F. Shorelines of Statewide Significance c. Priority of Uses This provision is confusing because the SMA lists these seven items as preferred uses "in developing master programs," and not as direct regulatory provisions. This provision fails to make that distinction and could be read as improperly seeking to directly regulate projects, rather than as a guide to the adoption of an updated SMP.	**VC**	**38T.16**
		II. USES **20.25E.020 Shoreline Uses**		
17	**20.25E.020**	A. Shoreline Use Preferences 1. This provision properly states that it is applying the use preferences that derive from the SMA (though referring here to 20.25E.010.F rather than the SMA is confusing based on the comment made to that provision).	**VC**	**38T.17**
18		2. This provision is confusing because it generally refers to "alteration of the natural condition" when in fact there really is no part of the shoreline of the City that is natural. Even the Mercer Slough has been subjected to	**VC, PR**	**38T.18**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		extensive development and manipulation. The SMA contains these preferences in the context of allowing them even when the shoreline **is still in its natural condition.** The premise of the approach is in error. The City's updated SMP should be focused on broad redevelopment options of existing private property to promote recreational use of the lakes. The SMP should also emphasize cleaning up the lakes through better stormwater management, and restoration of public property.		
19		c. The City has no commercial development since the SMA distinguishes marinas from commercial development, so this provision is confusing.	**VC**	**38T.19**
20	**20.25E.020**	B. Applicability of the Use Charts This provision correctly states that other provisions in the LUC that could be in conflict do not apply, thus clarifying the preeminence of the SMP as a set of State regulations.		**38T.20**
	20.25E.020	C. Use Chart Interpretation 1. Refer to Part IV Procedures for comments on process.		
21		2. Interpretation by Director a. This provision is copied from current LUC provisions. However, as stated here, the provision is confusing by including references to the Standard Land Use Coding Manual, the Standard Industrial Classification Manual, and the North American Industry Classification System. These three outside documents are solely for the purpose of classifying business and industry—none of which are authorized in the draft SMP as uses on Bellevue Shorelines. Furthermore, the SLUCM is dated 1965, is difficult to find, and is completely outdated for current uses. The NAICS has replaced the SIC Manual. (U.S. Census Bureau,	**VC, I**	**38T.21**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		http://www.census.gov/eos/www/naics/) The provision improperly incorporates these outside documents, and because the documents relate only to business and industry, the references should be stricken.		
		b. Appeal See process comments.		
	20.25E.020	D. Prohibited Uses in Shoreline Jurisdiction		
22	**p. II-3**	1. General 2. Prohibited Uses Apparently, this provision in referring to the Standard LUC is intending to refer to the 1965 Standard Land Use Coding Manual, but the reference is confusing since the City's Land Use Code is also referred to as LUC. As noted above, the only recognized standard is the NAICS.	**VC, Inc**	**38T.22**
23		g. The preclusion of educational institutions generally could be too restrictive given the handful of larger sites.	**VC**	**38T.23**
24		3. Prohibiting all uses not listed may be inconsistent with interpretation in C.	**VC**	**38T.24**
		20.25E.030 Shoreline Use Charts		
25	**20.25E.030**	The Key on page 2 is confusing or improper. P is listed as a Permitted Use "subject to Shoreline Substantial Development Permit requirements." Typical single family homes are exempt from shoreline permit requirements, and this Key seems to indicate otherwise.	**VC, Ex**	**38T.25**
26		Residential Chart The chart contains separate listings for Congregate Care Senior Housing, Nursing	**VC**	**38T.26**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		Homes, and Assisted Living. State law now contains special rules for these uses which are classified as either boarding homes or as effectively hospitals. These listings should be changed to be consistent with State law. Notes 5-8 are confusing as well given that assisted living may or may not mean senior housing, that the LUC definitions are inconsistent with State law definitions for boarding homes (the City's definition of nursing home excludes boarding home even though state law defines nursing homes as boarding homes), and that any of these uses are classified as boarding homes regardless of the percentage use of the building.		
		Other Charts – No comments at this time.		
27		Footnote 7 references public access, but the SMA encourages public access only for public projects, not private projects.	**I, PR**	**38T.27**
28	**20.25E.040**	**20.25E.040 Nonconforming Shoreline Conditions** Part C, Applicability, makes it clear that this Section applies to any use that is not covered by the Residential regulations including the residential non-conforming regulations. WSSA's interests are primarily with residential uses. However, many of the comments made on the Residential Nonconforming Regulations at 20.25E.065.J also apply here, and those comments should be considered to clarify these rules too.	**VC**	**38T.28**
		No additional comments at this time.		
		III. DEVELOPMENT REGULATIONS **20.25E.050 Dimensional Requirements**		
29	**20.25E.050**	A. General (includes chart)		**38T.29**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		Rule: Chart of dimensional requirements. Refers to LUC Chart 20.20.010 for additional requirements and then declares that where conflicts occur this section shall prevail. This creates complications due to the need to reconcile two charts and attempt to decipher whether any conflicts occur. Conflicts should be identified now and removed.	**VC**	
30		The Chart then refers in many instances to LUC Chart 20.20.010 which creates redundant regulations and circular approach, including adding notes to refer to notes.	**PR**	**38T.30**
31		Shoreline Residential (SR) (applies to all residential shorelines except Newport Shores) has 50' structure setback while Shoreline Residential Canal (SRC) for Newport Shores has only a 25' setback. No basis has been shown to impose more restrictive setback, except in Newport Shores. Most of the SR shorelines are highly developed in the same manner as Newport Shores. WSSA does not support VCA.	**PR**	**38T.31**
32		The setbacks lack any relationship to harm—even the City staff could not identify an ecological justification for a wider setback (PC 6/9/2010). The Planning Commission requested a full response before considering the 50 foot setback.	**PR**	**38T.32**
33		In addition, the 50 foot SR structure setback fails to even contemplate that some lots are only 100 feet deep or are effectively 100 feet or less of usable area due to location of the access road, which results in a potential building footprint that prohibits a reasonable size house, especially in comparison to numerous other contemporary houses on the shoreline.	**PR**	**38T.33**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
34		Phantom Lake is treated differently without cause in declaring in note (1) that the entire shoreline is regulated as a critical area when that conclusion is a site specific—whether a wetland exists cannot be determined generally. Imposing more restrictive regulations without basis threatens property rights. Furthermore, the information provided to the Planning Commission is undisputed that the City is using Phantom Lake as a detention pond as part of the City's stormwater system, and that the Lake is being flooded because the City is failing to properly manage outlet control. The City's use of Phantom Lake in this manner is clearly intentional. The wetlands around the Lake are largely or entirely created artificially by the excessive flooding of the Lake for stormwater purposes. Therefore, these wetlands are artificial wetlands that State law excludes from critical area regulations. RCW 30.70A.030(21).	**I, PR**	**38T.34**
35		Reference to "structure" setback instead of "building" setback creates confusion. Certain walls or stairs could be considered structures under permitting definitions in WAC 172-27.	**VC**	**38T.35**
36		Maximum Building Coverage refers to note (3) which is an error since (3) refers to lot coverage.	**VC**	**38T.36**
37	**20.25E.050** **p. 2**	B. Shoreline Setbacks – General 2. Setback Measurement from OHWM Lake Sammamish -- This provision imposes the severely flawed 31.8' NAVD 88 elevation for OHWM unless a site specific study is prepared. The 31.8' has no legitimate basis at all and giving citizens a flawed option is arbitrary and unreasonable. Also, this approach is not accepted by Ecology as the line of	**PR, VC, I**	**38T.37**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		shoreline jurisdiction or for bulkheads, so 31.8' creates a fictional OHWM which is inconsistent with the legal OHWM. OHWM should be measured based on the accepted high water level approved by the Army Corps of Engineers, 30.56'.		
38		Phantom Lake: Same comment as 34. The wetlands have been artificially created and are not regulated as critical areas. Like Lakes Sammamish and Washington, Phantom Lake has an outlet control and the OHHW should be the historic elevation of 260.2' NAVD 88 before manipulations by the City.	**VC, PR**	**38T.38**
39		3. Disturbance is Prohibited. This provision states essentially: "Disturbance is prohibited unless it is allowed." This provision is nonsensical, confusing, and subject to arbitrary implementation. Disturbance is not defined and is not part of the language of the SMA or WAC. Thus, disturbance could mean anything the staff person wants it to mean including grass mowing, raking leaves, etc. Then, the entire SMP would need to be searched to justify the specific action. This provision should be eliminated.		**38T.39**
40		4. Setback Modification Requires Report. Setback modifications require a Special Shoreline Report Process. Without any basis for a larger setback (see above), imposing conditions to allow modifications is arbitrary. Note: Provision states that Shoreline Variance may also be used, but these are so rare as to be meaningless to correct excessive situations.	**$, PR**	**38T.40**
41	**20.25E.050** **p. 3**	C. Shoreline Impervious Surfaces Flawed Premises. Two reasons exist to regulate impervious surfaces: water	**VC, PR**	**38T.41**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		quality and flow control to prevent downstream erosion. The only water quality concern is to prevent petroleum products dripping off vehicles in roads/driveways and open parking areas from being washed into the lakes by rainfall. Thus, other impervious surfaces such as roofs and patios create no water quality concern since the runoff is not polluted by vehicle drips. The concerns with downstream erosion are very minimal at Lakes Washington and Sammamish, and the State has no restriction on impervious surfaces discharging to these lakes. The State Department of Ecology Stormwater Management Manual for Western Washington (2005) specifically declares these lakes as "exempt receiving waters" or "exempt surface waters." Appendix I-E at E-1 and E-2. The basic rule for all projects discharging "into a fresh water" is that: "Projects must provide flow control to reduce the impacts of stormwater runoff from impervious surfaces and land cover conversions." Rule 2.5.7 at 2-30. However, the rule goes onto to establish a major exception: "except for projects that discharge to a water in Appendix I-E Flow Control-Exempt Receiving Waters." The basic premise of restricting impervious surfaces adjacent to Lakes Washington and Sammamish, including roofs and patios, is to prevent downstream erosion, <u>but that premise does not apply here</u> because no "stream" erosion is caused by discharging water into these "exempt receiving waters." **Therefore, the only legitimate regulation of impervious surfaces at the lake shorelines is for water quality related to roads/driveways and uncovered parking areas.** **Additionally, even if regulated, the premise of all stormwater regulation is to treat and control stormwater. The premise of these rules is that additional impervious surface is bad. There is no basis for that premise.**		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
42		1. Existing Impervious Surface. Heading is a misnomer because provision deals with existing and new.	**VC**	**38T.42**
43		Declares existing impervious surfaces as not considered nonconforming. Double negative is confusing. Impervious surface is undefined.	**VC**	**38T.43**
44		Where exceeds standard, allows new impervious surface where equal amount removed. GOOD PROVISION		**38T.44**
45		Last sentence requires new impervious surface to comply with shoreline setbacks, landscape development, and VCA. Creates confusion by relating impervious surface to structure setbacks—are patios subject to structure setbacks? The sentence is redundant and should be deleted.	**VC**	**38T.45**
46		2. Modifications Modifications require Special Shoreline Report Process. Without any basis imposing conditions to allow modifications is arbitrary.	**$, PR**	**38T.46**
47	**20.25E.050** **p. 3**	D. Maximum Building Height in the Shoreline 1. Refers to definitions at 20.25E.280. The definitions are incomplete because "height" is included, but refers to "average grade level" which is not included and should be defined per WAC 173-27-030.	**VC, I**	**38T.47**
48		2. The reference to "substantial number of residences" is vague.	**VC**	**38T.48**
		20.25E.060 General Requirements Applicable to All Shoreline Development		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		and Uses		
49	**20.25E.060**	A. Applicability Failure to clarify that other City codes and regulations are not a part of the SMP.	**VC**	**38T.49**
50	**20.25E.060**	B. No Net Loss of Ecological Function. States first that: "Shoreline uses and development shall be located and designed to prevent or mitigate adverse impacts to natural shoreline resources, wildlife habitat, and fish and other aquatic habitat to ensure no net loss of ecological functions and processes." The sentence is flawed because it imposes a broad overarching requirement that could be read to supersede all the detailed regulations, such that regardless of the other regulations, the City can always say not enough per this provision. Also, it is inconsistent with the Shoreline Guidelines which require only that exempt uses and activities achieve no net loss in the aggregate and not on a project basis. Thus, overall positive actions in the SMP Restoration Plan could offset minor decreases in ecological functions attributed to exempt uses and activities. The provision is also vague in stating "but not limited to" so unknown and never identified functions could be imposed at the whim of staff. Correction: This provision should be re-written simply to say that the intention of these regulations is to accomplish these purposes.	**VC, I, Ex, PR**	**38T.50**
51		The next two sentences list shoreline ecological functions and processes that "shall be protected," but that could be improperly interpreted to mean no impacts are allowed. The rule is no net loss which means that mitigation can be used to offset impacts caused by a project. These sentences are also vague and confusing because there is no qualifier stating "if applicable." Many of these functions and processes have no applicability at all to lake shorelines. And, the listing of these	**VC, I, Ex, PR**	**38T.51**

No.	Ref.	Comments	Concern Category	
		general categories of functions and processes fails completely to do any ranking or prioritizing. For example, only special fish and wildlife habitat needs to be considered and not any fish and wildlife habitat. Thus, there is no need to "protect" habitat for vermin such as rats and mice. Any such requirements would conflict with other health and safety requirements of the City code and County Health Agency. Correction: This provision should be re-written simply to say that these are the ecological functions and processes addressed in these regulations if applicable.		
52		2. Rebuttal Presumption This provision could be acceptable if the referenced regulations can be modified consistent with the comments herein. However, this provision appears to be in conflict with the prior provision, since that provision can be read to require avoidance of impacts regardless of the specific regulations.	**VC**	**38T.52**
53		3. When Analysis of No Net Loss is Required. This provision states that no net loss must be studied for a Shoreline Conditional Use Permit and Shoreline Variance, as well as part of a Shoreline Special Report and for a mitigation plan. However, this provision appears to be in conflict with the first provision, since that provision can be read to require avoidance of impacts on all actions.	**VC**	**38T.53**
54	**20.25E.060** **p. 2**	C. Technical Feasibility Analysis Rule: Any provision requiring showing of technically feasible requires a report by a qualified professional. This provision is excessive in many instances and at a minimum should be clarified to allow waiver of the need for a qualified professional in certain	**$**	**38T.54**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		circumstances.		
55		The five items listed create a highly complex report that by its terms exceeds scientific or engineering standards, combines multiple disciplines, requires assessment of ecological functions that staff has testified cannot be measured, and fundamentally requires study without any standards to make conclusions. In particular, engineers are not comfortable within their applicable standards to determine erosion risk within a short three year time period. In sum, this report is a mini-EIS that is unnecessary and excessive for many projects. Plus, the provision is different than the report in 20.25E.080.F. for shoreline stabilization creating confusion. The five additional "least impact" criteria further complicate the entire process making it expensive and uncertain whether approval will ever be granted. These least impact criteria are vague in referring to "least impacts," "minimized," with a circular implementation back to technical feasibility in c., and redundant requirements to comply with city code. It is unclear whether the "least impact" criteria apply at 20.25E.080 shoreline stabilization which has its own technical feasibility report, but no least impact criteria.	**$, VC**	**38T.55**
56	**20.25E.060 p. 3**	D. Mitigation Sequencing The provision is misnamed since D contains a variety of mitigation requirements – not just sequencing.	**VC**	**38T.56**
57		1. Mitigation Plan Requirements. The regulations contain insufficient information to identify real impacts, *i.e.*, harm to actual shoreline functions. Without that clarity, the mitigation plan requirements are flawed. Also, the mitigation plan requirements should be	**VC, I**	**38T.57**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		integrated with SEPA as required by WAC 173.26.201(2)(e).		
58		2. Mitigation Analysis Required. These provisions should not be stated as mandates since mitigation sequencing is subjective regarding for example the amount of avoidance that is necessary for "compliance."	**VC, I, PR**	**38T.58**
59		a. Mitigation Sequencing The subparts iii(2) and iii(4) should be consistent with WAC 173.26.201(2)(e)(i). These provisions here are less clear.		**38T.59**
60		b. Requesting necessary studies is vague because it is unclear whether it is different than the mitigation plan itself or redundant and expensive.	**VC, $**	**38T.60**
61		3. Mitigation Location Preference. The off-site provision goes too far in requiring recordation of mitigation requirements since off-site mitigation at a mitigation bank has those requirements handled by the provider and not by the applicant. Also, requiring recordation on mere off-site private properties will discourage good mitigation projects and the requisite improvements to ecological functions.		**38T.61**
62		4. Shoreline Mitigation Ratio. Rule: Requires 1:1 mitigation of "impacted shoreline functions." This standard appears to require individual function mitigation which is impossible for many functions. Mitigation ratios have been applied to the total area of wetlands for example, but that concept does not translate to mitigation of most individual functions. The individual functions are insufficiently and improperly identified generally and for many are not identified anywhere in the materials that would allow individual function replacement. For example, water	**VC, PR, I**	**38T.62**

No.	Ref.	Comments	Concern Category	
		temperature maintenance is listed as a function, but none of the following is identified in the materials for the regulated lakes: the existing temperature, the preferred temperature, actions that will measureable and adversely impact temperature, and the benefits in measurable temperature change created by suggested mitigation (such as planting trees on the shore of these relatively huge lakes).		
63		5. Mitigation Plan Requirements This heading, Plan Requirements, is the same as #1 and is confusing. This introductory provision allows use of templates to avoid some plan requirements, but those templates are not defined are specifically adopted for the SMP and constitutes vague requirements and improper incorporation if adopted.	**VC**	**38T.63**
64		These requirements are excessively complex for small mitigation projects on single family residential sites. The requirements of a monitoring program, contingent plan, and financial assurance (individuals usually can't get bonds so cash or cash set aside is typically required) are all excessive for small projects.	**$, VC, PR**	**38T.64**
65	**20.25E.060** **p. 7**	E. Requirements Applicable to Development and Uses in the Shoreline Jurisdiction For the reasons below, this entire Part E should be eliminated. 1. Disruption of natural shoreline resources shall be minimum necessary. This provision is broad and vague. Natural shoreline resources is not defined and could mean a number of different features. The provision	**VC**	**38T.65**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		appears to create an overarching global condition applying to every action which is inappropriate given all the specific provisions with detailed regulations.		
66		2. New development to avoid need for shoreline stabilization Again, a broad provision that duplicates other provisions, and is inconsistent with the Act protections and exemption, and vague since "new development" is undefined and could mean additions to existing homes.	**VC, Ex, I**	**38T.66**
67		3. Comply with City codes. Duplicates other provisions and improper incorporation.	**VC, Inc**	**38T.67**
68		4. Repair and Maintenance Duplicates other provisions and should be eliminated.	**VC**	**38T.68**
69		5. Project Segmentation – When Prohibited. Prohibits routine maintenance or repair when deemed to be part of a bigger project. This provision is completely without authority and substantially interferes with property rights. The provision is totally vague in referring to a single project which is not defined, and then prohibiting certain actions when deemed to "avoid compliance" in a manner that is also undefined. This provision appears to be simply a punitive provision to use for leveraged enforcement where the City can threaten property owners by making vague allegations that minor exempt work was part of a larger project, and thus demand additional mitigation that otherwise would not be required.	**VC, Ex, I, PR**	**38T.69**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
70	**20.25E.060** **p. 7**	F. Archaeological and Historic Resources This provision appears to apply only to construction activities. There is no reason to provide a duplicative provision here that will be imposed at construction. The result would simply be a permit condition repeating this provision verbatim when that condition is required by other requirements.	**VC**	**38T.70**
71	**20.25E.060** **p. 8**	G. Critical Areas in Shoreline Jurisdiction (reference to CAO) Staff has concluded that the Lake Washington and Lake Sammamish should not be regulated as critical areas. WSSA's position is that Phantom Lake should also not be regulated as a critical area. These conclusions must be expressly stated and the critical areas overlay district codes must be amended accordingly. Currently, the CAO calls out the lake shorelines as critical areas. Otherwise, without an express statement in the SMP and changes to the CAO, the concern would be that general provisions in the CAO would be misread say that the lakes are critical areas, and not just wetlands and steep slopes, for example, found in shoreline jurisdiction. This is still improper incorporation, and creates the problem during implementation in determining which provision provides the greatest protection.	**VC, Inc**	**38T.71**
	20.25E.060 **p. 8**	H. Accessory Parking, Loading Space and Maintenance Access This provision does not apply to single family use. No comments at this time.		
72	**20.25E.060** **p. 10**	I. Public Access 1. Purpose The purpose statement states that public access is required for all "new		**38T.72**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		development, reconstruction or replacement projects with some modest exceptions." The provision states that single family residences are not required to provide public access unless in a subdivision. This purpose statement is fundamentally flawed because the Act does not authorize or require public access exactions on private projects i.e. on private property. The Act at RCW 90.58.020 states: "Increase public access to publicly owned areas of the shorelines." This policy has no applicability to private property. This entire Public Access provision needs to be re-written accordingly.	**I, PR**	
73		The purpose statement is vague and confusing because the exception is only for "single family residences" but the next provision "When Required" provides detailed exceptions.	**VC, I**	**38T.73**
74		2. When Required. This provision should be re-named as applicability for consistency with other provisions. The provision seems contrary to the purpose provision which states there are few exceptions and states only one, but this provision lists specific applications. The purpose provision should be changed to refer to this list rather than making broad pronouncements that are inaccurate.	**VC**	**38T.74**
75		a. and b. Improperly applies public access requirements to private residential projects.	**PR, I**	**38T.75**
76		3. When Not Required This provision should be part of an Applicability provision.	**VC**	**38T.76**
77		a.i. Single family residents and their appurtenant structures This provision is vague and confusing since the reference to "residents"	**VC**	**38T.77**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		should be residential development. Plus, in this context with the reference only to appurtenants structures and appurtenant developments, it is unclear whether all activities on single family sites are exempt from public access requirements. For example, bulkheads less than 30 inches should not be classified as structures and might not fit under this exception. This provision needs to be modified to broadly exempt all activities on single family sites.		
78		b. and c. Exception possibility and limitations This provision fails to remedy the problem of improperly applying public access requirements to private residential development.	**PR, I**	**38T.78**
79		9. Legal Agreement This provision applies to private property only and as noted is inappropriate for that reason. This provision simply makes it plain that the City is taking a property right from the private property owner and transferring it to the public.	**PR, I**	**38T.79**
	20.25E.060 p. 15	J. Signage in the Shoreline No comment at this time.		
	20.25E.060 p. 16	K. Vegetation Conservation Not applicable to residential uses. See 20.25E.065.B. and G. No comments at this time, but see comments on residential that should apply to all activities.		
80	**20.25E.060 p. 20**	L. Water Quality, Stormwater, and Nonpoint Pollution This provision applies to all development and uses, so that would include		**38T.80**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		residential uses. However, the few provisions here appear to be duplicative with provisions in 20.25E.065 applying to residential development. This provision should be clarified to not apply to residential uses.		
		20.25E.065 Residential Shoreline Regulations The inclusion of almost all residential regulations in one location is a positive step.		
	20.25E.065	A. Purpose No comments.		
81	**20.25E.065 p. 1**	B. General Requirements Applicable to all Residential Development 1. Applicability. Rule: Applies to all residential uses and developments. The word "development" is undefined and numerous provisions apply the word inconsistently with the definition in the State SMA. Also, failure to clarify that other City codes and regulations are not a part of the SMP.	**VC**	**38T.81**
82	**20.25E.065 p. 1**	2. Site Planning. <u>Eliminate Entire Provision.</u> The entirety of these site planning requirements are overly restrictive and largely or completely unnecessary micromanaging. These rules simply create a morass of regulations that appear designed to make the approval process expensive and time consuming for even modest construction or yard modifications. Besides, most of the provisions improperly incorporate outside construction standards, none of which should be **part of the SMP**.	**VC, Ex, M, PR**	**38T.82**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
83		Residential development shall comply. This wording needs to be re-written to apply only to new development, not existing, and even then applying the rules to new modifications to existing sites is overly harsh and unworkable because site planning has already occurred so trying to un-site plan is restrictive and unfair.	**VC, Ex, M, PR**	**38T.83**
84		Shall comply with the following design criteria and development standards. This mandatory, shall, approach is too restrictive in the context of the rules which use design style criteria including "directs," "minimize," and "where feasible."	**VC, M, PR**	**38T.84**
85		a. Shoreline Stabilization. Rule: New development shall avoid need for new shoreline stabilization. This provision is inconsistent with the exemption for "normal protective bulkhead" for single family properties. This provision is vague and could be interpreted to be excessively broad and intrusive. "New" is this context could include additions or really any yard modification. "Residential development" could mean anything that relates to residential meaning patios, stairs to the dock, etc. "Life of the development" is unclear in referring to development generally which could mean the whole site not just the new development. Recommend Elimination.	**VC, Ex**	**38T.85**
86		b. Site Sensitivity Rule: Development should be designed so that land alteration is		**38T.86**

No.	Ref.	Comments	Concern Category	
		outside shoreline setback. Vague in use of word "development" and "land alteration" which could be interpreted broadly to mean even minor alteration preventing all use of the setback area i.e. no patios in 50' setback.	**VC, PR**	
87		c. Context Sensitive Design. Rule: Minimize topographic modifications and "shall" use tiered foundations and earth retention "where feasible," and slab foundations "shall" be "avoided" (or never used?). Improperly mixes mandatory and flexible provisions creating confusion. Tiered foundations: are infeasible on tight sites; unnecessarily restrict usable square footage, and; may not adequately address slope stability. Avoiding slab on grade appears to apply even to sites with slight or no grade, which is excessive. Generally, no basis is shown to support this requirement, which could work counter to other goals by encouraging larger footprints. <u>Recommend elimination</u>.	**VC, PR, M**	**38T.87**
88	**20.25E.065 p. 1**	d. Topographic Modification. Rule: Shall minimize changes in existing grade outside footprint, excavation shall not exceed 10 feet, fill shall not exceed 5 feet unless engineered in exceptional circumstances—driveways in excess of 15% or due to localized variations. This provision is totally arbitrary and hence excessive. Why is limit 10 feet and not 12 feet or 15? Keeping the topography intact under a	**M, PR, VC**	**38T.88**

No.	Ref.	Comments	Concern Category	
		building has no purpose. Again, the rule works counter to policies in at least three ways: (1) by encouraging larger footprints; (2) encouraging taller buildings which block views; and, (3) some slopes are stabilized by excavating and installing basements. This provision also improper mixes mandatory and flexible provisions.		
89	**p. 2**	e. Garage and Driveway Orientation. The allowance for garages to be in the setback on downhill slopes in ii. is beneficial. Otherwise, the vast majority of sites are so constricted as to make these provisions excessive. Improperly mixing mandatory and flexible provisions: shall comply with "should" and "where feasible." Fix: Change preliminary clause by adding to the end "where feasible and consistent with property owner goals."		**38T.89**
90		f. Parking and Driveways. i. No parking within shoreline setback. It is unknown whether any existing properties fail to comply with this provision, but if so, then it is too harsh. Recommend elimination or re-writing to not apply to existing conditions.	**PR**	**38T.90**
91		ii. Minimum Necessary. Generally, no basis is shown to support this requirement, and there is no definition or standard so "minimum size necessary" is vague and means whatever the reviewing person says it means. On some larger properties, a longer driveway is needed to get to the shoreline, so this rule would require detached	**VC, PR**	**38T.91**

No.	Ref.	Comments	Concern Category	
		garages and long walks to the home at the shoreline often on steep terrain.		
92		iii. Use "Natural Drainage Practices" and "Low Impact Development Standards" where feasible. These two standards are undefined. The provision goes on to refer to City Storm and Surface Water Utility Code and Engineering Standards "now or hereafter amended." Whether the terms are defined there is unknown, but this is improper incorporation of outside material. It is unknown whether "where feasible" is or is not the standard in the referenced documents, or the impact of such standards. See prior comments that detention is unnecessary because Lakes Sammamish and Washington are receiving waters.	**VC, Inc**	**38T.92**
93		iv. Best Management Practices (BMPs). Again, improperly incorporating outside materials in referencing City Storm and Surface Water Utility Code and Engineering Standards "now or hereafter amended." These appear to be construction standards that are unneeded in these regulations and should be eliminated.	**Inc**	**38T.93**
94		g. Accessory Utilities. Rule: Requires co-location of utilities in existing or proposed driveways. This regulation is far too complicated and unnecessary which is clear by everything that is stuck into one sentence and the vague and confusing concepts including "minimize disturbance," except if will not "realize intended function" or cost is "substantially disproportionate" compared to "environmental impact of proposed	**VC, PR, $**	**38T.94**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		disturbance." Some driveways need to curve, but this rule would require a highly detailed analysis to allow the utilities to go straight. In addition, this rule causes an expensive maintenance problem to access utilities under a driveway without any showing that not co-locating will cause any harm.		
95		The option to mitigate is also problematic. For example, when the City Parks Department installed a pipe at the Newcastle Beach Park shoreline, Parks argued that digging up grass and replanting grass caused no impact on shoreline resources and that planting a strip within the grass with native plants was ridiculous. The City Development Services agreed and issued the permit without mitigation. No mitigation was required then, and no mitigation should be required here.	**PR**	**38T.95**
96	**20.25E.065 p. 3**	h. Clearing and Grading Improperly incorporates five outside sets of materials. These appear to be construction standards that are unneeded in these regulations and should be eliminated. In addition, mixing clearing and grading is confusing because some of the other regulations do not regulate clearing (Flood Hazard rules).	**Inc, VC**	**38T.96**
97		The second provision goes beyond all the referenced materials by saying that "all clearing" which, although not defined in the Draft SMP, is defined in City Code to include mowing grass and trimming rose bushes. This provision says that "clearing" is permitted only for "approved residential use or development," an undefined term, and then restricts the "clearing" to the "minimum necessary." The regulation contains no standard whatsoever to describe how "minimum	**VC, PR**	**38T.97**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		necessary" applies to mowing grass, pruning bushes, or other typical landscaping work. <u>This provision should be eliminated</u>.		
98	**20.25E.065 p. 3**	i. Tree Retention Standard Outside VCA. Applies general city standards outside VCA. WSSA's position is that the general City tree retention standard should be applied to the entire site and that the VCA should be eliminated.		**38T.98**
99		The restriction for special habitat should be limited to the specific areas regulated by the State Fish and Wildlife Department to protect bald eagles (apparently near the I-90 bridge) and according to the same standards. Attempting to apply this provision without the same standards is improper.	**VC, PR**	**38T.99**
100	**20.25E.065 p. 3**	j. Critical Areas. Staff has concluded that the Lake Washington and Lake Sammamish should not be regulated as critical areas. WSSA's position is that Phantom Lake should also not be regulated as a critical area. These conclusions must be expressly stated and the critical areas overlay district codes must be amended accordingly. Currently, the CAO calls out the lake shorelines as critical areas. Otherwise, without an express statement in the SMP and changes to the CAO, the concern would be that general provisions in the CAO would be misread say that the lakes are critical areas, and not just wetlands and steep slopes, for example, found in shoreline jurisdiction. This is still improper incorporation because the CAO has yet to be considered.	**VC, Inc**	**38T.100**
101	**20.25E.065**	k. Water Qualify, Stormwater, Non-Point Pollution		**38T.101**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
	p. 3	Improperly incorporates seven outside sets of materials. These appear to be construction standards that are unneeded in these regulations and should be eliminated.	**Inc**	
102		i. The purpose provision is vague and confusing. It should simply say: "The purpose of this section is to promote high water quality to benefit recreational swimming and boating as well as fish and wildlife." In particular, the reference to water quantity is confusing—see comments regarding inappropriate regulation of impervious surfaces.	**VC**	**38T.102**
103		ii. The applicability section is redundant in referring to compliance with clearing and grading requirements which is addressed elsewhere. Giving the director power to condition is redundant and a misunderstanding of the planning level nature of shoreline permits causing citation to every applicable city code.	**VC**	**38T.103**
104		v. Specific regulation of septic systems should state where these are located and the City should include a voluntary restoration program with incentives to get these homes hooked up to sewer.	**VC**	**38T.104**
105		vi. The instances in which homeowners would be undertaking this type of construction is very limited and would usually be subject to a building permit. As a result, it is excessive to deal with these rules in the SMP. The construction materials provision is vague in reference to "aquatic environments" because this is a general provision and if intended just for docks, that is where it should be stated. Reference to BMPs of	**VC, PR, Inc**	**38T.105**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		the Western Wood Preservers is improper incorporation of outside materials.		
106		v. This restriction on tar sealants with PAH is unexplained and would apply to all construction as a general regulation.	**VC**	**38T.106**
107		l. Subdivision Standards. ii. WSSA does not support VCA	**PR**	**38T.107**
108		iii. State law, the State SMA, imposes public access requirements only on public property, not on private property. Imposing public access requirements on private property is a taking or otherwise an interference with property rights.	**I, PR**	**38T.108**
109		iv. VCA is not supported by WSSA.		**38T.109**
110		v. a. Dedicating the VCA as a separate tract turns that portion of the site into effectively public property that denies reasonable access and use of the lake enjoyed by every other shoreline property. As such, this provision is a taking or otherwise an interference with property rights. Also, dedication is required only for critical area buffers and the lakes are not critical areas.	**PR**	**38T.110**
111		b. VCA is not supported by WSSA.		**38T.111**
112		c. Requiring shared moorage is excessive and should not be required. If the properly owner demonstrates no net loss of shoreline ecological functions, then there is no reason to ban individual docks.	**PR, I**	**38T.112**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
113	**20.25E.065 Page 5**	C. Shoreline Dimensional Requirements for SR and SRC Environments <u>Residential development shall comply.</u> This wording needs to be re-written to apply only to new development, not existing, and even then applying the rules to new modifications to existing site is overly harsh and unworkable because site planning has already occurred so trying to un-site plan is restrictive and unfair.	**VC, PR**	**38T.113**
114		<u>Shall</u> comply with the following design criteria and development standards. This mandatory, shall, approach is too restrictive in the context of the rules which use design style criteria including "directs," "minimize," and "where feasible."	**VC**	**38T.114**
115		1. Applicability Phantom Lake should not be regulated as critical area.	**I, PR**	**38T.115**
116		2. Shoreline Dimensional Requirements. This provision appears to largely or completely duplicate the dimensional charts at 20.25E.050, so the same general comments apply. However, the Chart here, the .065 residential Chart confusingly employs different note numbers than the general Chart at .050, but also uses different language in some instances.	**VC**	**38T.116**
117		Rule: Chart of dimensional requirements. Refers to LUC Chart 20.20.010 for additional requirements and then declares that where conflicts occur this section shall prevail. This creates complications due to the need to reconcile two charts and attempt to	**VC**	**38T.117**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		decipher whether any conflicts occur. Conflicts should be identified now and removed. The Chart then refers in two instances to LUC Chart 20.20.010 which creates redundant regulations and circular approach, including adding notes to refer to notes.	**VC**	
118		Shoreline Residential (SR) (applies to all residential shorelines except Newport Shores) has 50' structure setback while Shoreline Residential Canal (SRC) for Newport Shores has only a 25' setback. No basis has been shown to impose more restrictive setback everywhere except in Newport Shores. Most of the SR shorelines are highly developed in the same manner as Newport Shores. WSSA does not support VCA.	**PR**	**38T.118**
119		The setbacks lack any relationship to harm—City staff could identify no ecological justification for a wider setback (PC 6/9/2010).	**PR**	**38T.119**
120		In addition, the 50 foot SR structure setback fails to even contemplate that some lots are only 100 feet deep or are effectively 100 feet or less of usable area due to location of the access road, which results in a potential building footprint that prohibits a reasonable size house, especially in comparison to numerous other contemporary houses on the shoreline.	**PR**	**38T.120**
121		Phantom Lake is treated differently without cause in declaring in note (2) that the entire shoreline is regulated as a critical area when that conclusion is inconsistent with the law which states that artificial wetlands created by stormwater flooding are not critical areas. Imposing more restrictive regulations without basis threatens property rights.	**PR, I**	**38T.121**
122		Reference to "structure" setback instead of "building" setback creates confusion. Certain walls or stairs could be considered structures under	**VC**	**38T.122**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		permitting definitions in WAC 172-27.		
123		Note (5) refers to maximum building height and refers to definitions at 20.25E.280. The definitions are incomplete because "height" is included, but references "average grade level" which should be defined per WAC 173-27-030.	**I**	**38T.123**
124	**20.25E.065** **p. 7**	D. Residential Impervious Surfaces This provision appears wholly redundant with 20.25E.050.C. It is understood that an attempt is being made to include all residential regulations in one location, but there is nothing in .050 to make that non-applicable to residential so the two are duplicative and confusing.	**VC**	**38T.124**
125		Flawed Premises. Two reasons exist to regulate impervious surfaces: water quality and flow control to prevent downstream erosion. The only water quality concern is to prevent petroleum products dripping off vehicles in roads/driveways and open parking areas from being washed into the lakes by rainfall. Thus, other impervious surfaces such as roofs and patios create no water quality concern since the runoff is not polluted by vehicle drips. The concerns with downstream erosion are very minimal at Lakes Washington and Sammamish, and the State has no restriction on impervious surfaces discharging to these lakes. The State Department of Ecology Stormwater Management Manual for Western Washington (2005) specifically declares these lakes as "exempt receiving waters" or "exempt surface waters." Appendix I-E at E-1 and E-2. The basic rule for all projects discharging "into a fresh water" is that: "Projects must provide flow control to reduce the impacts of stormwater	**VC, I**	**38T.125**

No.	Ref.	Comments	Concern Category	
		runoff from impervious surfaces and land cover conversions." Rule 2.5.7 at 2-30. However, the rule goes onto to establish a major exception: "except for projects that discharge to a water in Appendix I-E Flow Control-Exempt Receiving Waters." The basic premise of restricting impervious surfaces adjacent to Lakes Washington and Sammamish, including roofs and patios, is to prevent downstream erosion, <u>but that premise does not apply here</u> because no "stream" erosion is caused by discharging water into these "exempt receiving waters." **Therefore, the only legitimate regulation of impervious surfaces at the lake shorelines is for water quality related to roads/driveways and uncovered parking areas.** **Additionally, even if regulated, the premise of all stormwater regulation is to treat and control stormwater. The premise of these rules is that additional impervious surface is bad. There is no basis for that premise.**		
126		1. Existing Impervious Surface. Heading is a misnomer because provision deals with existing and new.	**VC**	**38T.126**
127		Declares existing impervious surfaces as not considered nonconforming. Double negative is confusing. Impervious surface is undefined.	**VC**	**38T.127**
128		Where exceeds standard, allows new impervious surface where equal amount removed. GOOD PROVISION		**38T.128**
129		Last sentence requires new impervious surface to comply with shoreline setbacks, landscape development, and VCA. Creates confusion by relating impervious surface to structure setbacks—are patios subject to structure setbacks?	**VC**	**38T.129**
130		2. Modifications		**38T.130**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		Modifications require Special Shoreline Report Process. Without any basis imposing conditions to allow modifications is arbitrary.	**$, PR**	
131		3. Exceptions The sentence saying that these exceptions do not apply to other City codes etc. is confusing. The intention appears to mean that despite the exception here, other codes may apply but that should be addressed elsewhere in defining the scope of the SMP regulations.	**VC**	**38T.131**
132		The need for this provision would be diminished if "impervious surface" was legitimately defined. The exceptions would seem to mean that decks, fences, open roofs, and garden stepping stones are all impervious surfaces that require an exception when that is inconsistent with the standard meaning of impervious surfaces.	**VC**	**38T.132**
133		4. Innovative Techniques. This provision excludes such things as pervious pavement from the calculation and is a positive provision. However, the benefits of this provision are undermined by giving the Director unfettered authority to approve or disapprove the innovative technique and to require "long-term performance assurance devise," i.e. bonding. It is essentially impossible for normal individuals to obtain bonds and so the only alternative is depositing cash with the City or possibly through a set aside at a bank. The threat of disapproval or a bonding condition will cause many to avoid this otherwise beneficial approach.	**$**	**38T.133**
134	**20.25E.065**	E. Residential Structure Setback		**38T.134**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
	p. 8	1. Applicability. Same comment that Phantom Lake should not be based on CAO.	**I, PR**	
135		2. General Setback Requirements. a. The provision is vague is stating that "development shall comply." Development is not defined, and so the concern is that the all types of construction including patios and stairs must comply with the setback which is improper. The provision should be clarified to apply only to buildings for which a building permit is required.	**VC**	**38T.135**
136		b. Measurement from OHWM. Repetitive of earlier provision. Lake Sammamish -- This provision imposes the severely flawed 31.8' NAVD 88 elevation for OHWM unless a site specific study is prepared. The 31.8' has no legitimate basis at all and giving citizens a flawed option is arbitrary and unreasonable. Also, this approach is not accepted by Ecology as the line of shoreline jurisdiction or for bulkheads, so 31.8' creates a fictional OHWM which is inconsistent with the legal OHWM. OHWM should be measured based on the accepted high water level approved by the Army Corps of Engineers, 30.56'	**VC, I, PR**	**38T.136**
137		c. Footprint Exception. This footprint exception should be clarified with an example to show that any size expansion on an upper floor within the "footprint" is not	**VC**	**38T.137**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		subject to the setback.		
138		The footprint exception should also apply to legally expanded structures and should not be limited to prior existing. Otherwise, after a legal expansion, e.g. 500 SF lateral expansion, the expansion would be nonconforming as soon as completed and prohibit a later second story expansion on legally expanded portion.	**VC, PR**	**38T.138**
139		The footprint exception should be expanded to include accessories buildings.	**PR**	**38T.19**
140		Plus, there really is no basis to have the new setback wrap around a building, it should simply stop at the building face. That would be consistent with the staff testimony that there is no ecological justification for a larger setback. The better approach would be to retain the existing 25 foot setback so that this provision would hardly be needed. The problem with the footprint exception is that it makes a bad rule not quite as bad, but the rule is still bad. The bad rule is making existing sites nonconforming. This bad rule will punish people who have not undertaken major remodels or tear downs by making it hugely expensive or impossible to do so. It is wrong and unfair to punish people for not building larger houses while rewarding others who have already constructed larger homes.	**VC, PR**	**38T.140**
141		d. Expansion Within Setback Outside VCA. This provision is redundant as it simply refers to other provisions.	**VC**	**38T.141**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
142		e. Expansion into VCA. WSSA does not support the VCA. Requiring a variance means it is almost certain that no such project will ever be approved. The SMP should allow shoreline conditional use permits for these situations with criteria, so that property owners have an opportunity to obtain project approval, rather than no chance.	**PR**	**38T.142**
143	**20.25E.065** **p. 9**	3. Setback Requirements in SR a. New and Existing Development Allowed in SR i. New Development in Shoreline Setback. This provision sets forth specific "development" that is allowed within the 50 foot setback without a setback reduction and without compliance with landscape standards and if compliant with the VCA rules. This approach is complicated since "setback reduction" and "landscape standards" have yet to be defined, and by creating the VCA exception to these exceptions. The better approach would be to say that: "The exceptions listed below are allowed based on the following: (1) compliance with setback reduction [cite] is not required; (2) compliance with landscape standards [cite] is not required; (3) compliance with VCA [cite] is required."	**VC**	**38T.143**
144		This provision is entitled "New Development" but the operative words say "the following development" not "the following new development" so the intent is unclear. Plus, certain provisions only make sense as a limitation on existing and new, and not just new. As a result, it is unclear whether	**VC, PR**	**38T.144**

No.	Ref.	Comments	Concern Category	
		these exceptions which act as severe restrictions apply to make existing development nonconforming. If so, then the provision is severe and excessive.		
145		The sentence stating that the VCA rules will prevail over landscape standards assumes that conflicts exist, and if so, those conflicts should be eliminated now, rather than trying to guess later whether a specific provision creates a conflict.	**VC**	**38T.145**
146		This provision demonstrates the problem of not having a definition of "development" and using undefined "structure" instead of building for the setback By listing these items essentially as exceptions, the rule assumes that these items are development that ordinarily must comply with the "structure setback" provision. For example, hardscape and fences should not be considered "structures" that must comply with the setback, and so no exception should be needed.	**VC**	**38T.146**
147		(1) Hardscape up to 25% of total setback not to exceed 1,000 SF. Hardscape is not defined and should not be applied to "grasscrete," gravel paths, stepping stones, etc. There is no justification for this provision since total impervious surface is regulated otherwise, excessive runoff is a non-issue to these lakes, and staff testified that there is no ecological justification for a greater setback.	**VC, PR**	**38T.147**
148		(2) Retaining walls less than 30 inches. This provision demonstrates the problem of lack of definitions since	**VC, PR**	**38T.148**

No.	Ref.	Comments	Concern Category	
		placement here indicates that the "structure setback" provision applies to retaining walls, and not just buildings. This provision is far too restrictive and lacks any basis in harm to shorelines. Some houses cannot be constructed on small steep lots without using retaining walls, so prohibiting retaining walls is further restricting the building envelope that is already highly restricted.		
149		(3) Minor Building Elements. This provision is a positive inclusion.		**38T.149**
150		(4) Fences, but only if outside the VCA. This provision is a solution in search of a problem. Very few if any fences have been constructed down on the beach all the way to OHWM. The imposition of this provision is excessive because it prevents owners from maintaining privacy and security, and does not even allow short or see through barriers.	**PR**	**38T.150**
151		(5) Landscape features. Same as (1). Walkways and stairs should not need to comply with the "structure setback" unless these are considered structures, which is improper and excessive.	**PR, M**	**38T.151**
152		(6) BBQs or fire pits. This provision should be clarified to mean built-in BBQs, and portable BBQs fire enclosures, since staff had previously interpreted the setback provision to prohibit a built-in BBQ on an existing patio or deck.	**VC**	**38T.152**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
153		(7) Expansion of primary structure up to 500 SF. The provision is vague or excessive in applying to expansion of 500 SF generally, and not to expanded footprint. The reference to square feet generally would ordinarily apply to all the SF of the expansion even if based on two stories of 250 SF/each.	**VC, PR**	**38T.153**
154		This provision contains a limitation that it is limited to "over lifetime of the structure." This implies a property specific permanent covenant will be imposed by the City and either backed up by an unrecorded note in the city file (with no notice to new owners) or a recorded document (that impairs title). Thus, the lifetime ban is too restrictive and should be limited to a three year period so as not to create a permanent restriction.	**PR**	**38T.154**
155		The second limitation is that the expansion must be parallel to or behind the existing building line. This approach is more restrictive than even the existing CAO, which allows expansion beyond the existing building line when related to essential functions i.e. the kitchen cannot be moved and expanded in a different location. 20.25H.055.C.3.n.	**PR**	**38T.155**
156		The figure designed to illustrate this provision is missing.	**VC**	**38T.156**
157		(8) Accessory structures 200 SF or less if outside VCA. The VCA restriction should be eliminated. For clarification, the following should be substituted:	**PR, VC**	**38T.157**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		Accessory structures are allowed in the structural setback when the portion within the setback is equal to or less than 200 sf.		
158		The figure designed to illustrate this provision is missing.	**VC**	**38T.158**
159	**20.25E.065** **p. 10**	ii. New Development In Shoreline Setback – Setback Reduction Required. This provision attempts to create a special provision for expansion of primary structures greater than 500 SF and accessory structures greater than 200 SF. However, the provision is totally confusing as written. The reference to setback reductions set forth in E.3 lacks specificity. The greater than 500 SF reference is confusing because the exception previously discussed applies only to expansions parallel to the existing building line, while this has no limitation but applies only if over 500 SF and not under.	**VC**	**38T.159**
160		iii. Existing Development—Maintenance. This provision authorizes maintenance and repair to structures "and improvements such as fences, retaining walls and rockeries less than 30 inches in height, and similar improvements of a minor nature." This creates confusion with i. above that assumes that these "improvements" are also "structures" subject to the structure setback.	**VC**	**38T.160**
161		The provision goes on to condition maintenance and repair of existing improvements on compliance with VCA provisions,	**VC**	**38T.161**

No.	Ref.	Comments	Concern Category	
		which appears to be excessive subject to what is required.		
162		The State SMA exemption for maintenance and repair contains no limitation, so this provision interferes with the exemption.	**Ex**	**38T.162**
163	**20.25E.065** **p. 10**	b. Reduction of Setbacks for SR Environment. The premise of this provision is flawed because staff testified that it not possible to determine any ecological benefit from larger setbacks. The harm caused that justifies imposing the 50 foot setback has never been established, and neither has the harm avoided by reducing the setback. The reduction menu has no basis in science and thus becomes an excessive leveraging mechanism that interferes with property rights.	**PR, VC**	**38T.163**
		i. Applicability No Comments at this time.		
164		ii. Requirements to Reduce Shoreline Setback Rule: The initial rule requires a showing that non-shoreline setback shall have been modified "to the maximum extent allowed," but then is restricted to the minimum necessary "to allow avoidance of shoreline setback." This rule is confusing and excessive because the reduction of the non-shoreline setback must occur without regard to any site constraints or other factors. Then, the non-shoreline setback *shall be maximized*, but is then limited to the *minimum necessary*. These vague and countervailing requirements make it hard to know what is required	**VC, PR**	**38T.164**

No.	Ref.	Comments	Concern Category	
		and make building design difficult and problematic. This ability to reduce non-shoreline setback may be helpful in some locations and should provide even more flexibility to go to less than 10 foot front yard setback, but the rule as a required first step is too restrictive. Again, these provisions often force re-site planning a site in a retroactive manner which is often impossible.		
165	**p. 11**	The Chart is also confusing because the title is "maximum reductions" but it appears that the Chart calls out the minimum setbacks, not the maximum reductions	**VC**	**38T.165**
166		Rule: The rule also requires that "all other provisions of LUC 20.20.010 shall apply." This provision improperly incorporates outside code, and otherwise complicates this requirement by making unclear what else is needed.	**VC, Inc**	**38T.166**
167		Rule: The last part of the rule precludes flexibility through a Shoreline Special Report. This preclusion just highlights the strictness of the menu options that are applied without regard to harm caused or other factors.	**PR**	**38T.167**
168		Note (1) imposes a mandatory on-site parking area even if a garage is provided. The rule is too restrictive and may not provide sufficient flexibility to avoid site constraints which might be achieved by not providing parking in addition to a garage.	**PR**	**38T.168**
169		iii. The preliminary rule is flawed as explained above because the	**PR**	**38T.169**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		harm has not been explained or quantified.		
170	**p. 11**	Menu Options WSSA supports continuation of the existing SMP 25 foot setback, and thus WSSA does not support the 50 foot setback with Menu Options. The lack of justification for the 50 foot setback means that the Menu Options are simply "extortion," as explained by the United States Supreme Court in *Nollan v. Calif. Coastal Commission*, because there is no connection between the harm caused and the mitigating requirement. If some minor connection is identified, the Menu Options would still violate the rough proportionality rule articulated by the United States Supreme Court in *Dolan v. City of Tigard*. The reductions gained appear to be random or arbitrary, and in particular have no relationship to the excessive costs involved for only a small reduction (#3, #4, #5). Some options are too strict as to preclude potentially beneficial actions. Option 5, conversion of impervious driveways etc., should not require conversion of all surfaces, and should instead be encouraged by affording the conversion a 1:4 increase in setback encroachment (1 SF conversion allows 4 SF of setback encroachment). The use of flat X feet setback reductions excludes proportional reductions based on square feet. For example, conversion of impervious surfaces of 1000 SF gains a 5 foot reduction, but conversion of 990 SF affords no reduction.	**$, PR**	**38T.170**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
171	**p. 13**	iv. Special Shorelines Report. Rule: The Report can only be utilized after a demonstration that "proposal objectives cannot be accommodated," through a non-shoreline setback reduction or use of the options menu. The rule is made nonsensical by the final sentence that prohibits use of the Report to modify the Menu Options. These requirements are vague and confusing. Accommodation of project objectives is not defined. Assessing ecological functions is problematic because as noted staff has testified that the ecological benefits of larger setbacks cannot be quantified. The rule is made very confusing due to the last sentence that prohibits use of the Report to modify the Menu Options. It is unclear whether certain benefits such as conversion of 990 SF impervious surface can utilize a Report because it is below the threshold of 1000 SF or cannot utilize a Report because impervious surface is addressed. More problematic, this prohibition attempts to lock in the Menu Options as strict mandates without any consideration of harm, and without consideration of nexus and rough proportionality. Under any interpretation of ecological function, home expansions into the setback will often cause no harm if a patio is converted for example. Without a way to assess harm and apply real mitigation, the Menu Options are excessive and interfere with property rights. This report is also called a Shoreline Special Report and the use of two different names is confusing.	**VC, PR** **VC** **PR** **VC**	**38T.171**
172		v. Shoreline Variance	**VC, PR**	**38T.172**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		Variances are extremely difficult to qualify for, and also require special affirmative approval by the State Department of Ecology. As a result, this is not a viable option to provide flexibility.		
173		vi. Additional Requirements. Subpart (1) requires a hold harmless releasing the City for liability for damage to improvements in the shoreline setback. This provision is outrageous. One inference is that staff believes that soft shoreline stabilization will be ineffective to protect homes closer than 50 feet to OHWM or that such measures might damage neighboring property, and so this rule demands a waiver of damages and requirement to defend the City against lawsuits.	**PR**	**38T.173**
174		(2) Requirement for as-builts plans is a construction permitting issue, and putting the requirement here is duplicative and confusing.	**VC, M**	**38T.174**
175		(3) Requires a document recorded on title which just evidences that the City is taking a property interest in the property. This provision seeks only to cloud title and increase paperwork for minor changes.	**PR**	**38T.175**
176		4. Setback Requirements for SRC Environment. This provision sets forth different rules for Newport Shores, which has no basis.	**PR**	**38T.176**
177	**20.25E.065** **p. 15**	F. Landscape Development The heading here is a total misnomer and should read "Landscape Requirements" or similar, since "development" is confusing when combined with landscaping.	**VC**	**38T.177**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
178		The heading is also misleading because the requirement here is not to plant landscaping, but rather to plant "native growth" in the VCA. Landscape requirements have a long history in the City Code. For example, perimeter landscaping for commercial projects is well understood. The provisions here have no relationship with perimeter landscaping. Rather, these so called "landscape" requirements are the same as critical area buffer restoration or mitigation. Describing the requirements here as "landscaping" is false.	**VC**	**38T.178**
179		The general comment is that these provisions are very complicated in defining certain activities in Subpart 1 and then partially using those definitions in setting forth the standards in Subpart 2, but also not using those definitions and adding other activities.	**VC**	**38T.179**
180		Also, the landscape requirements lack nexus and proportionality by mandating planting without any relationship to harm. The perceived harm has never been explained or is improperly assumed. The flawed logic is that expanding a house will harm native growth in a manner requiring mitigation with planting of native growth. The structure setback is not a native planting area, and instead is usually an existing developed yard, so there is no connection between expansion in a yard and impacts on a native growth VCA.	**PR**	**38T.180**
181		1. When Required. Heading should be "Applicability" to maintain consistency with similar provisions.	**VC**	**38T.181**
182		a. New primary structure on undeveloped site.	**VC**	**38T.182**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		The word "undeveloped" is undefined and under certain definitions all lots in Bellevue are developed to some degree with roads, sewer stubs, platted, graded.		
183		b. Reconstruction of primary structure with greater lot coverage. The word "reconstruction" in (b) is undefined. This provision should not apply to any part of the reconstruction outside the 200 foot shoreline jurisdiction.	**VC, PR**	**38T.183**
184		c. Expansion of more than 500 SF. Subpart (c) uses the word "laterally" while the earlier provision uses the more complicated phrase "parallel direction from or behind the existing building line."	**VC**	**38T.184**
185		d. Expansion waterward of existing façade. Earlier provision used existing building line instead of façade.	**VC**	**38T.185**
186		e. Accessory structure greater than 200 SF within structure setback. This provision should be modified to apply only when the portion intruding in the VCA exceeds 200 sf.	**VC**	**38T.186**
		f. Subdivision greater than 4 lots. Same as above – not proportionality.		
187	**20.25E.065** **p. 15**	2. Landscape Standard. a. SR Environment i. Applied to F.1.a. and F.1.b—new or reconstructed and requires planting of 60% of VCA e.g. 25 feet wide and 60 feet of a 100		**38T.187**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.		Comments	Concern Category	
			foot wide lot. At a minimum, the standard lacks proportionality. An undeveloped site may be highly disturbed, so assuming that vegetation will be disturbed is false. With respect to reconstruction, the 60% rule applies for any amount in excess of existing lot coverage—even a few SF or a minor percentage increase such as less than 5%, which is clearly not proportional.	**PR**	
188		ii.	This standard is a bit of a catch all, requiring 1:1 planting in the VCA for: home expansions laterally greater than 500 SF (F.1.c), hardscape in excess of the exception, larger accessory structure (F.1.e). The standard fails proportionality by not distinguishing between a one story and two story expansion. And, the provision appears to require the 1:1 ratio to apply to the project, e.g. the entire home expansion. For example, a 500 SF lateral one-story home expansion has no planting requirement, but a 600 SF lateral two-story expansion requires planting of 600 SF even though it has 200 SF less ground disturbance. And, there is no reduction where the 600 SF one-story lateral expansion is removing 300 SF of hardscape; again with 200 SF less of ground disturbance.	**PR**	**38T.188**
189	**p. 16**	iii.	This standard requires 2:1 planting in the VCA for intrusions into the 50 foot setback. The structure setback is a landscaped yard in almost every instance, so the "impact" is loss of patio space, grass, and other	**PR, VC**	**38T.189**

No.	Ref.	Comments	Concern Category	
		domestic plants. Thus, requiring native growth planting as mitigation for these impacts has no nexus to the harm. Also, requiring 2:1 mitigation is also without any basis. This type of ratio began two decades ago in relation to wetlands mitigation because at the time ensuring survival was successful only half the time. Here, the requirements including monitoring thus survival is guaranteed. So even if an impact can be shown, there is no basis for 2:1 mitigation. Plus, this provision does not address impossible situations where there is not enough VCA to accommodate 2:1 mitigation.		
190	**p. 16**	b. The landscape standard for the SRC is set at 35% for new or reconstructed homes. No basis is shown for this special treatment for Newport Shores which has the same type of highly developed shorelines as the rest of the City.	**PR**	**38T.190**
191		c. Previously required "landscaping" in VCA may not be counted. The figure is missing. This rule has no connection to lot impacts, so the excessive planting requirements severely restrict use of the site when available area for planting is used up.	**VC**	**38T.191**
192		d. Stewardship Recognition. This provision seems beneficial in allowing the counting of existing native trees and plants, but the provision needs clarity. It is unclear whether native plants outside the VCA may be counted. The provision also is confusing in saying that native vegetation shall be accepted "toward" the requirements, but qualifying that by saying only if at least as effective, and then giving the staff authority to supplement to fully meet the standard. The qualification is redundant.	**VC**	**38T.192**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
193		e. Consolidation of landscaping in one location. This provision creates a strict mandate, which forces any alternative into the Alternative Landscaping Option. The Open House boards showed homes with VCA plantings violating this provision, and showed no homes complying with provisions. This provision precludes creation of a 40% view corridor in the middle of the lot as shown on the Open House boards and in the City's current Critical Area Handbook.	**$**	**38T.193**
194		f. Species Choice. The heading "choice" is a misnomer because native plants are mandated and they must be selected from the Bellevue Shoreline Handbook, which is not a document that exists at this time.	**PR**	**38T.194**
195		The discretionary allowance of non-native species is not practical because the standards are unknown—"replicate the structural habitat" is undefined and the purported "ecological functions" are unsupported.	**VC**	**38T.195**
196		Reference to the Shoreline Handbook, which does not exist, improperly incorporates outside guidelines (presuming it is modeled on the Critical Area Handbook).	**Inc**	**38T.196**
197		Assuming that Shoreline Handbook is similar to the Critical Area Handbook, the native planting requirements are wholly impractical and inconsistent with the SMA goals, namely protecting views. Within the 25 foot by 60 foot planted VCA (for a 100 foot wide lot), the standard appears to require 8 trees that grow to 50 feet or more (including Sitka spruce and Western red cedar which both grow to 125 feet). Furthermore, no basis has been shown to require native plants over non-native plants (other than invasives). Many non-native	**Inc, PR**	**38T.197**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		plants, and many plants that are considered by staff to be non-native (Rhododendrons), provide functions equivalent to the so called native species.		
198		g. Alternative Landscape Option. This provision is confusing because only Subpart e. mentions variation through this Option, while this Option appears to read as if any of the requirements may be modified. However, the Species Choice provision has its own clause for approving changes.	**$, VC**	**38T.198**
199		The criteria for approval are too restrictive since the proposal must show either increased retention of significant trees or water quality improvement for most sites. Plus, showing improved ecological function is problematic because the concept is unsupported and unclear.	**PR**	**38T.199**
200	**20.25E.065** **p. 17**	G. Vegetation Conservation The heading is a misnomer. This section, and combined with the Landscape Development section, is more about "Native Vegetation Restoration" than conservation. VCA for Vegetation Conservation Area is misused because the VCA is established on the entire water frontage to 25 feet landward of OHWM and applies whether or not there is any native vegetation to conserve. The area is effectively set aside for native growth vegetation restoration. In short, this provision seeks to establish a Native Growth Protection Area in exactly the same manner as a critical area buffer, even though the Lake Washington and Lake Sammamish are not critical areas, and even though staff stated that no buffers were being created.	**PR**	**38T.200**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
201		The WAC Shoreline Guidelines specifically state that vegetation conservation does not apply to already developed sites, yet that is precisely what this section seeks to do.	**I**	**38T.201**
202		1. Applicability The provision is stated to apply to "land-disturbing activities" within the VCA, but land-disturbing is not defined. The staff has previously classified removal of patio pavers and replacement with grass as sufficient land disturbance to justify vegetation restoration mandates. If this is the standard, then the premise is flawed.	**VC, PR**	**38T.202**
203		Furthermore, the reference to land-disturbing is inconsistent with other specific Subparts that reference vegetation removal as the triggering event.	**VC**	**38T.203**
204		2. VCA Requirements a. SR Environment i. VCA is defined to be the entire water frontage 25 feet deep regardless of whether the existing is native growth or a patio. This description is excessive.	**PR**	**38T.204**
205		ii. Prohibited improvements. This provision intends to prohibit all activities in the VCA except for access to a dock. This is excessive.	**PR**	**38T.205**
206		This provision is confusing because it first references "new development" (an undefined term) and lists improvements, but then	**VC**	**38T.206**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		states that "other non-water enjoyment uses" are also prohibited. Thus, it is not entirely clear whether only new non-water enjoyment uses are prohibited.		
207		Nevertheless, even if interpreted only to prohibit new uses, this provision is confusing because "non-water enjoyment uses" is unclear. Water-enjoyment is defined to include "recreational uses" and that would seem to encompass homes on the water and all attendant uses. But if so, the regulation of non-water dependent uses is unclear because it is unknown what that refers to on single family home sites.	**VC, PR**	**38T.207**
208	**p. 17**	iii. Tree Retention and Native Vegetation. Rule 1: Removal of any native vegetation within the VCA is prohibited, regardless of location (i.e. within flower bed) or size (two inch high plant in grass lawn or poking up in deck). Rule 2: Removal of any tree regardless of size or species is prohibited, except hazard trees. Rule 3: "Any removal of significant trees or native vegetation shall be in compliance with this section." Rule 1 states that removal of any native vegetation is prohibited, so it is unclear whether the provision for maintaining existing landscaping is an exception. If the Critical Area Handbook is meant to refer to the Shoreline Handbook, there is no "definition" of native vegetation in that Handbook. Rather, that Handbook is specifically designed to assist in creating enhancement and restoration projects, not for determining the existence of Native Vegetation. The Handbook	**VC**	**38T.208**

No.	Ref.	Comments	Concern Category	
		contains planting templates with suggested plants and provides no criteria for identifying an area of native vegetation on the ground. If the plants listed are to be taken as native plants, then every Douglas Fir, Western red cedar, and vine maple constitutes native vegetation.		
209		Reference to the Shoreline Handbook, "now or hereafter amended," which does not presently exist with that name, improperly incorporates outside guidelines (presuming it is modeled on the Critical Area Handbook).	**Inc**	**38T.209**
210		Rule 2 applies to any tree, not just significant trees, whether native or exotic. There is no basis for keeping exotic trees. Read in conjunction with Rule 3 (removal of "significant trees"), it is unclear what standards allow removal of non-significant trees that are not hazard trees.	**VC**	**38T.210**
211		Rule 3 is confusing and excessive. Significant trees are not defined in the SMP and this provision conflicts with Rule 2.		**38T.211**
212		iv. Replanting Requirements. This provision too is confusing. The provision applies, "when vegetation removal is allowed," but that can be read to include when native plants are removed as part of existing landscaping maintenance. Thus, even if iii. is not read to prohibit removal of native vegetation within existing landscaping (within the mowed lawn or flowerbeds), this provision appears to still require replanting, which under the circumstances would require tearing up existing landscaping to make room for the native planting.	**VC, PR**	**38T.212**
213		The discretionary allowance of non-native species is not practical because the standards are unknown—"replicate the structural habitat"	**VC**	**38T.213**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		is undefined and the purported "ecological functions" are unsupported.		
214	**20.25E.065** **p. 18**	v. Allowed Development within VCA. The provision is vague is stating that "development is allowed" when in compliance. Development is not defined, and there is no clarification whether this provision applies only to new construction or to existing construction. If applied to existing "development," then the provision would make essentially all homes nonconforming in a manner that would be massively expensive to correct. This wording needs to be re-written to apply only to new construction, not existing homes, and even then applying the rules to new modifications to existing sites is overly harsh and unworkable because site planning has already occurred so trying to un-site plan is restrictive and unfair.	**VC, PR**	**38T.214**
215		(1) Only 40% of VCA may be developed with "non-structural water enjoyment recreational development," such as lawns, pervious hardscape patios, and paths/steps for access to the water. This provision imposes severe limitations on the remainder of the VCA not intended to be revegetated as native growth.	**PR**	**38T.215**
216		The provision calls up prior confusing language including suggesting that hardscape is a structure, which might be subject to the structure setback, but that pervious hardscape is not a structure.	**VC**	**38T.216**
217		The provision is confusing by using the term "non-structural" which is not defined and then referencing certain improvements as examples like a definition. Yet, the standard of what constitutes	**VC**	**38T.217**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		non-structural is unknown.		
218		(2) Improved areas must be "consolidated and contiguous and located" as far from OHWM to the "maximum extent feasible." It is unclear whether "improved areas" includes grass and landscaping given the prior provision. The provision is vague because there is no standard to apply and many purportedly allowed improvements, a patio for example, could be arbitrarily declared too large in violation of the maximum extent feasible standard. The provision could be interpreted to be inconsistent with the 40% rule by requiring improvements away from OHWM.	**VC, PR**	**38T.218**
219		(3) Improvements shall be constructed and maintained in a manner that minimizes adverse impacts to shoreline ecological functions. This provision is vague because the potentially impacted functions are undefined. Recall that staff testified that it was impossible to determine whether a larger setback would result in any benefit to ecological functions.	**VC, PR**	**38T.219**
220		The provision improperly mixes a mandate (shall) with a flexible or discretionary provision (minimize). The combination gives arbitrary power to the staff to determine minimize with no standard to apply.	**VC, PR**	**38T.220**
221		(4) Requires native growth planting for new non-structural recreational developments on a 1:1 basis with a minimum of 100 SF. "Non-structural recreational developments" is undefined. The provision fails nexus and rough proportionality.	**VC, PR**	**38T.221**
222	**p. 18**	b. SRC Environment. The special treatment for Newport Shores is not	**PR**	**38T.222**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		supported.		
223		i. The general rule of designating 35% of the 25 feet closest to OHWM is nonsensical as a regulation because the portion designated as VCA, 35%, is not specified, and is essentially owner defined.	**VC**	**38T.223**
224	**p. 18**	c. Vegetation Management within the VCA. i. Existing Landscape Maintenance. Rule: Complicated rule allows some maintenance of some landscaping within the VCA. There is no basis to describe this rule as applying to "legally established" or to have a prior to date. The prior SMP had no restriction on landscaping within 25 feet of OHWM, so legally established is meaningless in this context and creates confusion by attempting to impose a non-existent requirement.	**PR**	**38T.224**
225		Routine maintenance is defined to be too restrictive because it does not allow replacing mature plants with new plants, or replacing old lawn with new sod.	**PR**	**38T.225**
226		Routine maintenance is also defined to be too restrictive by being limited to activities "consistently carried out" so that "ornamental species predominate over native species." There is no definition for these terms and so they are vague and confusing. This provision is inconsistent with the exemption for maintenance.	**VC, Ex**	**38T.226**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
227		These provisions appear to be more restrictive than existing CAO rules which also allow vegetation management plans to modify vegetation.	**PR**	**38T.227**
228	**20.25E.065** **p. 19**	ii. Removal of noxious species Rule: Allows removal of noxious species. The concern here is that removal is allowed "consistent with King County's Noxious Weed Program's best management practices for removal of noxious weeds," thus improperly incorporating outside standards.	**Inc**	**38T.228**
229	**20.25E.065** **p. 19**	iii. Hazard trees Rule: Allows removal of hazardous trees within the VCA which are defined as trees posing a threat to public safety, or posing an imminent risk of damage to an existing structure or other permanent improvement. **Recommended:** The provision as a whole is too complicated with six subparts and numerous requirements that are not entirely clear. The provision should be eliminated. If not eliminated, then the provision should be re-written to allow removal of hazard trees based solely on notice to the City on the recommendation of a qualified professional (certified arborist, registered landscape professional or professional forester) with no City permits required. The City appears to charge a minimum of about $400 to review hazard tree removals.	**VC, PR**	**38T.229**
230		The description of hazard trees should be clarified to ensure that risks of injury to people, such as in a yard where no improvements exist, is a sufficient threat to public safety to justify tree removal.	**VC, PR**	**38T.230**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
231		The standard for determining that tree is hazardous is too strict because a professional is required to make the determination. Also, the rule is vague in whether personal choice is allowed about how much risk a family is willing to bear. The practice, at least in some circumstances, is that the qualified professional recommends removal of hazard trees after considering personal choice, but this rule could result in inconsistent staff decisions. Healthy trees are blown down in every wind storm, and if near to houses, cause damage and threaten public safety. Also, trees can pose different types of threats or problems such as blocking the view of the swimming area or dock needed for safety and security reasons. This rule should be clarified to allow personal choice about bearing these risks, instead of leaving the determination potentially to pure staff discretion.	**VC, $**	**38T.231**
232		(1) Requires report from certified arborist, registered landscape professional, or professional forester documenting hazard and providing a replanting schedule. This requirement demonstrates how complicated this rule is made and will impose increased cost and paperwork for a minor issue.	**$**	**38T.232**
233		The City does not have the referenced form and instead the City currently requires submittal of a Tree Hazard Evaluation Form by the International Society of Arboriculture or equivalent. This improperly incorporates outside material. That form on its face provides a hazard rating, but does not make the judgment about whether a certain rating number justifies removal—that determination is left to a qualified professional, but that judgment	**Inc, VC**	**38T.233**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		call is not clear in this provision.		
234		(2) Further restricts removal of hazard trees by requiring pruning and thinning first. Imposes unnecessary restrictions and paperwork to remove a hazard tree.	**PR**	**38T.234**
235		Subpart (2) goes on to say that hazard trees must be left as "wildlife snags" which means leaving a terribly unsightly trunk and branches that interferes with the view of the lakes. This requirement is totally uncalled for in an urban neighborhood. An example can be found in the wetland creations area at the Lake Hills Connector and Richards Road. <u>This requirement needs to be eliminated.</u>	**PR**	**38T.235**
236		(3) This Subpart states that the debris from cutting down hazards trees "may be left" in the VCA, "unless removal is required" to reduce fire or pest hazard to other healthy vegetation. This requirement should be eliminated because it completely ignores the harm to people from infestation by rats and other vermin that thrive in such debris piles. If not eliminated, then this requirement needs to be clarified by adding the statement: "Debris from cutting trees shall not be left in residential areas to avoid promotion of pests such as rats and other vermin." This requirement is confusing because it combines "may" with a phrase that looks like a requirement.	**VC**	**38T.236**
237		(4) Rule: Requires replanting of 3 trees in the VCA for every 1 hazard tree cut down, and requires planting of native vegetation for disturbed vegetation.		**38T.237**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		This requirement is excessive because there is no showing that cutting down the hazard tree will cause any harm at all. The site may have many other trees. The hazard tree may be a small or may be an exotic non-native tree. Yet, this requirement arbitrarily requires replanting in all instances.	**PR**	
238		The requirement also requires planting as defined by the Shoreline Handbook which does not exist and represents improper incorporation of outside documents.	**Inc**	**38T.238**
239		The requirement to replant for disturbance to native vegetation is vague because "native vegetation" and "disturbance" are not defined in the code. The provision should simply require that: "Removal of hazard trees should minimize harm to native vegetation."	**VC**	**38T.239**
240		(5) Rule: Requires qualified wildlife biologist review if tree to be removed is critical habitat such as an eagle perch. The restriction for special habitat should be limited to the specific areas regulated by the State Fish and Wildlife Department to protect bald eagles (apparently on near the I-90 bridge). Attempting to apply this provision without the same standards is improper.	**VC**	**38T.240**
241	**20.25E.065** **p. 20**	iv. Select Vegetation Pruning. This provision has been partially copied from the Critical Area Overlay code. However, in copying the provision, two important sentences were improperly deleted, namely: "Where vegetation has been consistently managed by topping or other	**VC**	**38T.241**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		pruning methods, nothing in this part shall preclude the continuation of such practices. Pruning shall be performed in a manner that ensures continued survival of the vegetation."		
242a		But, the application of this provision needs to be clarified, namely that this provision applies only to sites that do not qualify under Existing Landscape Maintenance. Almost all lake shoreline properties are landscaped and so this provision generally does not apply as a regulation.	**VC**	**38T.242a**
242b		The provision restricts the work to hand tools. That restriction is uncalled for and unnecessary. Properly pruning a large tree often requires a chain saw to efficiently complete the work while hanging high in the air. Many large limbs need to be pruned for safety. It is totally unrealistic to preclude use of chain saws, and demand that a permit be required to limb off a few branches.	**M**	**38T.242b**
243		The provision improperly incorporates outside material and defectively so by implying that pruning guidelines will be created. The City already has a document called Pruning Guidelines that are guidelines only, not approved by the City Council, and not appropriate for enforcement as regulations.	**Inc**	**38T.243**
	20.25E.065 p. 20	H. Shoreline Stabilization Refer to 20.25E.080		
	20.25E.065 p. 20	I. Residential Moorage 1. Applicability		
244a		2. Definitions c. & d. Boatlifts attached to the dock also contact the substrate according to	**VC**	**38T.244a**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		industry consultants. Thus, these definitions do not encompass all boatlifts. Same comment to m. and n.		
244b		h. Moorage Platform This definition is confusing because the definition is tied to regulation and appears to include "finger piers" as well as the loading area. The definition should have some connection to moorage and safe boarding.	**VC**	**38T.244b**
245		i. Repair The definition should stop with the first sentence, which is consistent with the State exemption. The second sentence is confusing and is inconsistent with the State exemption by declaring certain repairs as not repairs. Namely, repair is deemed to include replacement of piles but not replacement of 50% of more of dock piles. Certain repairs are repairs and other repairs are not repairs. Some replacement of piles is a repair and some replacement of piles is a replacement/new dock.	**VC, Ex**	**38T.245**
246		j. Walkway This definition is confusing because it is tied to regulations and some portions of an access may not be defined as a walkway or it may mean that access which does not meet the precise definition of greater than 30 feet from OHWM or ending at 9 feet of depth is not a walkway. The definition should be: "The portion of a dock that provides access to the shore."	**VC**	**38T.246**
247		k. Watercraft The definition is confusing and should be changed to be called Personal		**38T.247**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		Watercraft to be the same as common understanding. Subparts 1., m. and n. should be changed accordingly.	**VC**	
248	**p. 21**	1. General Requirements The provision does not clarify whether these standards are intended to apply to existing docks such that all existing docks would be deemed non-conforming if not meeting these requirements.	**VC**	**38T.248**
249		This rule is too restrictive by stating that the general requirements cannot be altered even through a Shoreline Special Report.	**PR**	**38T.249**
250	**p. 22**	a. Dock Materials This provision is too complicated and specific. It should just be re-written to say that dock materials on new docks shall be approved by EPA for aquatic use.	**VC**	**38T.250**
251		Improperly incorporates outside documents by Western Wood Preservers.	**Inc**	**38T.251**
252		b. Dock Lighting This provision is too restrictive and/or vague in saying limited to "minimum" elevation and not allowing light emission "outside of dock surface."	**VC**	**38T.252**
253		c. Accidental Destruction This provision contains too many conditions on reconstruction of a damaged dock. One year is too short or at a minimum there should be an extension option for up to three years. The reference to "beyond the control of the owner" is undefined and could be improperly used to undercut "accidental." Beyond control of the owner could be misused to claim that owner should have done better job maintaining dock to prevent destruction.	**VC, PR, Ex**	**38T.253**
254		d. This provision is redundant with the introductory provision that states that a Shoreline Special Report may not be used to change these provisions.	**VC**	**38T.254**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
255	**20.25E.065 p. 22**	2. General Requirements Applicable to New or Replacement Residential Docks. The title is a misnomer because the New or Replacement includes repaired docks with over 50% piles.	**VC**	**38T.255**
256		Generally, the rules are far too specific and restrictive. The Army Corps of Engineers and State Department of Fish and Wildlife already provide restrictive oversight of docks and those agencies are specifically charged to protect fish. Any dock that can obtain approval from the Corps or WDFW protects fish, and so redundant and overlapping regulations by the City are unnecessary. These rules should be limited to a few basic rules with broad parameters to allow people the most flexibility in seeking approval from the Corps and WDFW.	**M, PR**	**38T.256**
257	**p. 23**	Chart 20.25E.065 I.4 New and Replacement Residential Dock Standards Maximum Walkway width is limited to 4 feet and is too restrictive—it should be at least 6 feet to allow for better safety if desired. The Note (3) ability to get to 6 feet is too restrictive because forces a person wanting more safety on the walkway to give up platform area—the provision is punitive in this regard. The agencies regulate this issue, so the City should defer.	**PR, M**	**38T.257**
258		Maximum Walkway length For Lakes Washington and Sammamish, this provision is confusing because the "maximum" length is defined to be a "minimum" length or by relation to "at least" to a water depth of 9 feet from OHWM. It is unclear, but if the walkway must end at 9 feet depth based on OHWM, then the provision is flawed because	**VC**	**38T.258**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		boat moorage is based on low water not high water, so that could require moorage of boats in 6 feet of water during the summer.		
259		Moorage Platform Location For Lakes Washington and Sammamish, the reference to 9 foot water depth from OHWM is confusing or flawed per the last comment if moorage location cannot be beyond 9 foot of water depth below OHWM, when it should be 9-10 feet of depth at low water. The agencies regulate this requirement, so the City should defer.	**VC**	**38T.259**
260		Reference to Note (4) is apparently supposed to be to Note (5). This provision is confusing because water depth of 9 feet is not tied to low water or high water.	**VC**	**38T.260**
261		Platform Maximum Size --- New Rule: Also applies to any existing dock that adds even one square foot of moorage platform. For Lakes Washington and Sammamish, the square footage is too limited because the totals include many finger piers too.		**38T.261**
262		Reference to Note (5) is apparently supposed to be to Note (6).	**VC**	**38T.262**
263		Platform Maximum Size – Existing, Reconfiguring, Replacing For Lakes Washington and Sammamish, the provision is too restrictive as stated for new, since any increase in an existing dock is treated as new. The Notes should clarify that "No Greater Than Existing Moorage Platform" allows the size to be maintained even if the configuration or location is changed. That appears to	**PR**	**38T.263**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		be the intent, but some clarity is required. There is no impact if the platform does not get any larger, so this accommodation would encourage positive changes without punishing property owners.		
264		Piling Maximum Size The heading is confusing because it also applies to location and decking.	**VC**	**38T.264**
265		All the piling limitations are too restrictive and have no relationship to protection of fish. These regulations are unnecessary and are addressed by the Corps or WDFW.	**M, PR**	**38T.265**
266		Piling Location This provision is vague or too restrictive. The reference to "set" is unclear, but appears to refer to a "pair" of pilings – one on each side of the walkway. Plus, in deep water with a 30 foot walkway, the restriction to one pair may be inadequate for safely supporting the walkway.	**VC, PR**	**38T.266**
267		Mooring Pile Provide definition of mooring pile.	**VC**	**38T.267**
268		The limitation that decking be grated is also too restrictive as the Corps or WDFW may authorize other translucent materials, or other options may be created in the future.	**M, PR**	**38T.268**
269 a		(2) The setback should not apply to boatlifts or personal watercraft lifts. The dock setback is an established rule, trying to apply it to an underwater piece of a lift is confusing.	**VC**	**38T.269a**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
269 b	**Chart Notes 20.25E.065.I.4 p. 25**	Note (3) and (4): See above, these provisions are punitive by forcing people to choose between a safe walkway and a reasonable size moorage platform.	**PR**	**38T.269b**
270		Note (5): See above, reference to low or high water is missing so unclear on meaning and intent.	**VC**	**38T.270**
271		Note (6): Excludes two finger piers from size calculations, but only if in h shape. Finger piers do not have sufficient width to cause any shading effects so limiting this allowance to only h shapes has no connection to preventing harm—it is just an arbitrary and punitive restriction.	**PR**	**38T.271**
272		Note (7) regulates spacing of piling on Lakes Washington and Sammamish and is vague in referring to "maximum feasible" spacing, to "minimize shading," to avoid a "wall effect." The Corps and WDFW regulate these requirements.	**M, PR, VC**	**38T.272**
273	**20.25E.065 p. 25**	b. New and Replacement Residential Docks – Limitations iii. Combining Frontage This provision is confusing because it provides an exception for ii. but ii. authorizes docks on all existing lots and new lots compliant with the zoning codes. So, it is unclear when this exception would apply or if a different and problematic meaning is given to ii.	**VC**	**38T.273**
274		iv. New boathouses are prohibited. This provision is vague or too restrictive because boathouses are undefined and if applied to a structure housing a boat anywhere within 200 feet of the water, it is too restrictive. Plus, the harm caused by boathouses on shore is not demonstrated.	**VC, PR**	**38T.274**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
275	**20.25E.065 p. 26**	c. New and Replacement Residential Docks – Design Criteria These criteria are vague and unnecessary because these requirements are regulated by the Corps and WDFW.	**VC**	**38T.275**
276	**p. 26**	d. New and Replacement Docks – Performance Standards These criteria are vague and unnecessary because these requirements are regulated by the Corps and WDFW.	**VC**	**38T.276**
277		i. Provision is vague or unsupported by science in requiring protection of LWD, and undefined "native vegetation" and "emergent vegetation."	**VC**	**38T.277**
278		ii. Skirting is prohibited unnecessarily because it can be a safety feature especially with docks high above low water as required by some of these regulations.	**PR**	**38T.278**
279	**p. 27**	v. Mitigation is Required The provision is confusing because the d. is for New and Replacement but then the Mitigation Required v. refers to "new."	**VC**	**38T.279**
280		Especially if applied to replacement but also new, this provision is completely detached from any showing of harm, so the provision requires mitigation even where the replacement dock is a benefit to ecological functions, and without any assessment of harm from a new dock.	**PR**	**38T.280**
281		The requirement for mitigation is completely addressed by WDFW that specifically is charged to address all fish impacts, so regulation by the City is unnecessary, too restrictive, and prone to creating	**M, VC, PR**	**38T.281**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		conflicting requirements.		
282		(1) Rule: Plant vegetation of 10 feet wide by 60% of lake frontage or equal to overwater coverage of dock. Requiring vegetation planting on land totally lacks any nexus to harms caused by docks.	**PR**	**38T.282**
283		(2) Augment beach with gravel Requiring beach gravel totally lacks any nexus to harms from docks.	**PR**	**38T.283**
284		The provision is vague in referring to templates to be approved later and to planting undefined emergent vegetation.	**VC**	**38T.284**
285		(3) Requiring removal of 15 linear feet of bulkhead totally lacks any nexus to harms from docks.	**PR**	**38T.285**
286		(4) Rule: Plant 2X vegetation required by (1) in different location on site. Requiring vegetation planting on land totally lacks any nexus to harms from docks.	**PR**	**38T.286**
287	**20.25E.065** **p. 27**	5. Repair Existing Docks a. Limitations These limitations on repair of existing docks are inconsistent with the State exemption. In particular, i. improperly restricts replacement of pilings to 50% within three years and repair or replacement of other	**Ex**	**38T.287**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		parts of docks.		
288		b. Standards This provision also improperly restricts the State exemption for repair including replacement.	**Ex**	**38T.288**
289		These standards are too restrictive given oversight by the Corps and WDFW.	**M**	**38T.289**
290		Subpart ii. is vague and may be read as requiring replacement of 50% or more of pilings to require compliance with piling restrictions in the Chart, which could require complete reconstruction of docks.	**VC, PR**	**38T.290**
291		Subpart iii. requires replacement grating to allow light transmission if over 20 SF. This provision is confusing because the Chart requires only "grated" decking and no other types of decking with light transmission. This provision is excessive, punitive, and counterproductive by requiring complete replacement if 21 square feet need replacement. Replacing decking should be encouraged even if less than the entire dock.	**VC, PR**	**38T.291**
292		6. Reconfiguration and Replacement This provision is redundant and should be eliminated.	**VC**	**38T.292**
293		7. Boat and Watercraft Lifts Boatlifts attached to the dock also touch the substrate, so this eliminating disturbance is nonsensical. Also, the concern is to protect the nearshore habitat	**VC, M**	**38T.293**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		so boatlifts further out create no harm. The agencies sufficiently regulate these issues and the City should not get involved.		
294		a. The basis for this limitation has not been explained.	**PR**	**38T.294**
295		b. This is too restrictive for some deep water locations.	**PR**	**38T.295**
296		c. Reference to cover is confusing, this appears to mean canopy. Restriction to one cover is arbitrary.	**PR, VC**	**38T.296**
297		d. Requiring solar access is unclear, though it may mean to allow sun under the canopy. But, that would defeat the purpose. Besides, the personal watercraft would block the sun anyway, so the canopy adds no additional shade. There is no showing of any real harm by shading.	**VC, PR**	**38T.297**
	20.25E.065	J. Nonconforming Single Family Development		
298	**p. 29**	1. Purpose 2. Applicability a. Rejects state provisions in favor of local regulations The City cannot make the rules more restrictive such as to interfere with the State exemptions, and that is what occurs here.	**Ex**	**38T.298**
299		b. This provision is confusing because some other LUC code provisions are not applicable and some are, and the difference is an undefined "general development requirements."	**VC**	**38T.299**
300		3. Documentation Rule: Applicant required to provide documentation that residential		**38T.300**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		"development" "was permitted" and "has been maintained over time." This provision goes far beyond the legal requirements applicable to nonconforming uses and structures. A property owner has an obligation to establish legal nonconformance in the first instance. But, that burden is simply met by having direct or indirect knowledge that permits were obtained or that the work proceeded based on the understanding that permits were not required. The law has never required documentation. This provision proceeds from the premise that the property owner must produce documentation, and thus is illegal. Furthermore, nothing in the WAC regulations require documentation. The only reasonable and fair way to address this issue is to provide real guidance to property owners in order for them to fill out a form. Based on the form and a check of City records, if staff has a concern then staff needs to raise that concern in a manner that is consistent with legal standards for constitutional due process and for addressing nonconforming uses and structures	**PR, I, M, VC**	
301		To the extent that Director discretion is allowed to waive documentation requirements, the provision is vague because no standards are provided.	**VC**	**38T.301**
302		The premise that work needed permits is flawed since under the currently approved SMP many activities did not require permits. The following did not require permits: patios, walkways, landscaping, small accessory buildings, and any other wall that was less than 30" in height. Thus, requiring property owners to demonstrate that work was permitted is confusing and improper. Furthermore, the State exemption for single family homes and appurtenant structures has since 1971 and still does provide a blanket exemption for shoreline permitting, so this provision improperly requests documentation of permitting	**VC, Ex, I**	**38T.302**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		that was never required. Most of the docks constructed prior to the last ten years were also exempt from shoreline permitting and docks constructed prior to 1971 were legally constructed without any permits. It is further vague and confusing to demand that property owners prove a negative, namely that no permits were needed. Also, the 2006 code amendments were illegally applied to shorelines, and according to the EHB 1653 changes in 2010, the 2006 code amendments need not apply to modifications to existing single family sites.		
303		The second requirement that the development has been "maintained over time" is also improper and vague. This provision is inconsistent with the State exemption for repair and maintenance.	**VC, Ex**	**38T.303**
304		As with other provisions, the reference to "residential development" is vague and confusing, and rather it should refer to buildings and other structures.	**VC**	**38T.304**
305	**p. 29**	a. Development Permitted when Constructed. i.Permits ii.Zoning and land use codes The listing of these two items demonstrates the backwards nature of this provision because the City records are the best source of this information so requiring the property owner to produce the information is nonsensical.	**VC**	**38T.305**
306	**p. 30**	b. Development Maintained Over Time Rule: Produce title reports, appraisal documents, or dated photos. The purpose and intent of this provision is unclear and vague. Title reports contain information about deeds and encumbrances, so the connection is unclear. The language used appears to come from nonconforming provisions applied to commercial uses where uses may have ceased for a time. Once a home is built, the "residential	**VC**	**38T.306**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		development" is maintained forever until it is converted to a use other than residential.		
307		c. Appeal. This appeal provision is flawed because it violates the consolidated permitting requirements of state law, RCW 36.70B. Further, an appeal of a Process II decision requires the property owner to carry the burden of proof on appeal and that violates the legal standard for nonconforming uses and structures.		**38T.307**
308	**p. 30**	4. Regulations and Thresholds These detailed and complex rules far exceed the allowable regulation consistent with the State exemption for maintenance and repair.	**Ex**	**38T.308**
		a. Ownership b. Continued Enjoyment No comments.		
309		c. Routine Maintenance and Repair Rule: Repair work that exceeds 50% of "replacement value" is redefined to not qualify as maintenance, and requires full compliance with current regulations. This provision is inconsistent with State exemption as set forth in State regulations WAC 173-27, which has no such restriction.	**Ex**	**38T.309**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
310		This provision is completely vague and confusing and can be read to apply to internal remodeling projects that encompass "restoration and modernization improvements," and if so, this provision would severely undermine the footprint exemption by precluding interior remodeling exceeding 50% of replacement value. The provision could also be applied to landscaping projects. It is noted that Subpart 5.a. provides that homes (primary structures) are granted the footprint exemption from this rule, but failing to note the footprint rule here or in the d. Exemptions from the Calculation while including it pages later further demonstrates the confusion and complexity of this code.	**VC, PR**	**38T.310**
311		Usage of 50% of replacement value is typically reserved for commercial structures and is rarely applied to residential homes.	**PR**	**38T.311**
312		i. The limitation of a three year period is a further improper limitation on the State exemption by restricting multiple small maintenance projects that exceed the 50% threshold.	**PR**	**38T.312**
313		ii. This provision improperly affords the Director full discretion to determine value with no standards or process.	**VC**	**38T.313**
314	**20.25E.065 p. 30**	d. Exemptions from Calculation of Replacement Value This provision appears to be copied from the commercial provisions created for the Bel-Red Corridor regulations, and is mostly nonsensical as applied to homes. Namely, homes are almost never subject to special projects to upgrade fire prevention, seismic retrofitting, etc. Otherwise, the provision is simply too complicated and creates a difficult bookkeeping problem to exclude certain work	**VC**	**38T.314**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		as exempt to attempt to fall under the 50% threshold.		
315		iv. This provision describes painting, caulking, washing as maintenance. This is confusing because these activities do not qualify as "development" under State law, and listing them here as exemptions creates the premise that these are regulated activities that require an exemption which is incorrect.	**VC, I, Ex**	**38T.315**
316	**p. 31**	e. Accidental Destruction i. Rule: Allows reconstruction including relocation on site that reduces nonconformities, but on condition that vacated areas are restored with native vegetation. This provision is punitive by imposing replanting requirements even when a reconstructed home reduces the nonconformities. There is no basis to support this requirement. The phrase "outside control of property owner" must be deleted because it undermines the meaning of accidental.	**VC, PR**	**38T.316**
317		ii.Rule: Must start construction within one year. This time period is too short. There could be insurance claim issues, family issues such as if someone was hurt, financial problems, and the need to retain architects and other consultants to design the replacement home. This time period should be two years with an automatic one year extension upon request and another year extension with cause.		**38T.317**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
318	**p. 31**	f. Rule: Nonconforming status lost if abandoned for 12 months, and discontinuance for 12 months deemed to be intention to abandon. This rule again comes from commercial "uses", and is completely nonsensical and pernicious as applied to *residential uses*. These are homes that are only used as homes, and the use never changes. As written, if the sole occupant of a home dies, and it takes more than a year to resolve the estate and sell the house to a new owner, this provision would require the property owner to prove that there was *no intention of abandoning the residential use* on threat of having *to tear the house down and comply with the new regulations*.	**PR, VC, I, Ex**	**38T.318**
		g. No comments		
319	**20.25E.065 p. 32**	5. Nonconforming Development Within Structure Setback a. Primary Structures This provision should be moved to the Applicability subpart at J.2 to give better notice of the intention of these rules.	**VC**	**38T.319**
320		As written, the provision is confusing in referring to a "primary structure" that "houses" a residential use" because the primary structure in the residential development area is automatically the house.	**VC**	**38T.320**
321		b. Accessory Structures. The cost threshold should also not apply to accessory structures as that would bar all maintenance in violation of the State exemption.	**Ex**	**38T.321**
322	**p. 32**	6. Nonconforming Residential Development within VCA		**38T.322**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		a. Primary Structures The rational rule provided in 5. is taken away here for homes with a portion within the VCA. For those homes, the 50% replacement rule applies in all its strictness even to interior remodeling projects anywhere in the home. If the 50% replacement value is exceeded for the interior remodeling project, then the rule requires demolition of that portion of the home within the VCA. This is a harsh and unnecessary result since interior remodeling causes no ecological harm. Further, this rule is inconsistent with the State exemption and clearly not required by the WAC. The rule offers the variance procedure where removal is infeasible, but the variance process is expensive, uncertain, and requires special affirmative approval by the State Department of Ecology.	**PR, Ex, I** **$**	
323		b. Accessory Structures The same harsh rule is applied to accessory structures, which will not meet the 50% replacement value for even modest repairs, so this rule mandates removal of accessory structures without regard to any harm and contrary to the State exemptions.	**PR, Ex**	**38T.323**
324		7. Nonconforming Overwater Accessory Structures This rule should be clarified to <u>not</u> apply to moorage which is governed by the next provision. This provision also violates the State exemption by imposing the 50% valuation limitation on repair.	**VC, Ex**	**38T.324**
		8. Nonconforming Moorage and Shoreline Stabilization Refers to other provisions.		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		No comments.		
		20.25E.070 Specific Use Regulations		
	20.25E.070	A. Purpose		
	20.25E.070	B. Aquaculture No comments		
	20.25E.070	C. Recreation. No comments		
325	**20.25E.070 p. 11**	D. Transportation 1. Applicability. Applies to "transportation uses and development." It is not clear whether the undefined phrase "transportation uses and development" applies to driveways and private roads within a single family residential site. The provision refers to outside code chapters but unclear whether these references are intended to incorporate or not. Needs a clear provision excepting residential sites.	**VC, Inc**	**38T.325**
326	**p. 13**	3.d. Railroads. Are any railroads within shoreline jurisdiction? If not, why include provisions, rather than making it a conditional use?	**VC**	**38T.326**
	p. 14	e. Pedestrian and Bicycle. Refers to .070, Specific Use Regulations for Recreation No comments		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
327	**p. 14**	f. Bridges and Culverts. Again, unclear whether this applies to residential sites since even some single family sites use bridges. If so, the provision is unacceptable and goes too far in regulating residential sites.	**VC, M**	**38T.327**
328	**p. 14**	g. Light Rail provision is incomplete—listed as TBD.	**VC**	**38T.328**
329	**p. 14-15**	h. Commercial Float Plane Terminals Confusing because provision regulates helipads and private float plane moorage. The regulations are insufficient and the provision should specifically require a shoreline conditional use permit process to ensure that all necessary conditions are imposed.	**VC**	**38T.329**
330	**p. 16**	i. Ferry Terminals. Not clear where this would be allowed. The regulations are insufficient and the provision should specifically require a shoreline conditional use permit process to ensure that all necessary conditions are imposed.	**VC**	**38T.330**
331	**20.25E.070** **p. 15**	E. Utilities It is not clear whether these provisions apply to utilities within a single family residential site. Utilities is undefined. Residential sites should be exempted. If applied to residential sites then far too complicated and objectionable for minor changes on residential sites e.g. screening and landscaping, public access, incorporation of native plantings, shoreline substantial development permits for maintenance, repair, and minor expansions.	**VC**	**38T.331**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		20.25E.080 Shoreline Modifications		
333	**20.25E.080** **p. 2**	A. Applicability This provision does not exempt or otherwise distinguish residential development, which creates confusion as .065 is otherwise comprehensive except for .065.H. Shoreline Stabilization.	**VC**	**38T.333**
	20.25E.080	B. Breakwaters, Jetties, and Groins No comments		
334	**20.25E.080**	C. Clearing, Grading and Fill This provision should be clarified to not be applicable to residential development, which is governed by .065.	**VC**	**38T.334**
335		1. Limitations c. Allows the following activities but only with appropriate technical studies. v. Incidental filling to repair shoreline stabilization measures. If applied to residential, then the rule is excessive because technical studies would be required to justified filling defined as incidental, which otherwise would simply be part of the repair and hence fall within the State exemption.	**$, VC, Ex**	**38T.335**
	20.25E.080	D. Dredging and Disposal No comments.		
	20.25E.080	E. Non-Residential Moorage Facilities, Boat Ramps and Launches		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		No comments.		
336	**20.25E.080** **p. 12**	F. Shoreline Stabilization 1. Applicability This provision limits shoreline stabilization measures to protection of existing primary structures including homes, which by inference would preclude new shoreline stabilization measures. Such a rule is inconsistent with the State exemption, and otherwise interferes with property rights. The term "at or above" needs clarification because it is different than State rules using "at or near."	**VC, Ex, PR**	**38T.336**
337		2. Definitions It is confusion to have definitions here as well as in .280 and also in the moorage regulations.	**VC**	**38T.337**
338		a. No comment b. Shoreline Stabilization Limited to protection of existing primary structures and improperly excludes protection of new structures in violation of State exemptions and property rights.	**Ex, PR**	**38T.338**
339		c. Soft Shoreline Stabilization This definition is confusing because it first provides a definition and then discusses an approach, namely that for some sites a combination of soft and hard stabilization will be necessary. It is unclear whether a blended approach is a "combination" of soft and hard as stated, or	**VC**	**38T.339**

No.	Ref.	Comments	Concern Category	
		intended to be part of the definition of "soft' with qualifications.		
340		d. Hard Shoreline Stabilization Provision is incomplete and/or jumbled to be nonsensical.	**VC**	**38T.340**
		j. Avoidance Measures No comment on definition		
341		k. Minor Repair Rule: Lists a number of repair activities, but then limits these to 50% of linear length of stabilization measure in three year period. This provision is inconsistent with the State exemption which has no limitation on repair and replacement of "normal protective bulkheads." This type of rule is subject to too much staff discretion which was clear when staff allowed the City Parks Department to process a bulkhead repair of over 100 feet at Newcastle Beach Park as a "minor repair," while private property owners are never afforded such a benefit.	**Ex, VC**	**38T.341**
342		l. Major Repair This definition actually further limits the minor repair definition which is confusing, since the definition for "major repair" should be every repair that is not defined as "minor repair." The provision as written is also duplicative with the minor repair definition, and it is	**VC, Ex**	**38T.342**

No.	Ref.	Comments	Concern Category	
		inherently confusing to define any repair as being treated as "new" which is the case here. Qualification on repairs is inconsistent with the State exemption.		
343	**p. 14**	3. Technically Feasible Rule: Any provision requiring showing of technically feasible requires a report by a qualified professional. This provision is excessive in many instances and at a minimum should be clarified to allow waiver of the need for a qualified professional in certain circumstances, such as demonstrating the need for shoreline stabilization on sites subject to massive wave action.	**$**	**38T.343**
344		The five items listed create a highly complex report that by its terms exceeds scientific or engineering standards, combines multiple disciplines, requires assessment of ecological functions that staff has testified cannot be measured, and fundamentally requires study without any standards to make conclusions. In particular, engineers are not typically comfortable within their standards to determine erosion risk within a short three year time period. In sum, this report is a mini-EIS that is unnecessary and excessive for many projects.	**PR, $, M, VC**	**38T.344**
345	**20.25E.080 p. 14**	4. New or Enlarged Shoreline Stabilization Measures Title is a misnomer because major repairs are deemed to be new.	**VC**	**38T.345**
346		a. When Allowed. Again, only applies to existing primary structures, e.g. homes, and precluded for new homes in violation of State exemptions and	**Ex, PR**	**38T.346**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		property rights.		
347		Rule: Shoreline stabilization only allowed where avoidance measure are not technically feasible. This rule is confusing because it is only four pages later that the fine print clarifies that major repairs to protect existing shoreline uses are "presumed necessary" i.e. exempt from demonstrating that avoidance measures are not technically feasible. Otherwise, the face of this provision would be excessive and require expert reports for obvious conclusions.	**VC, PR**	**38T.347**
348		b. Rule: Soft Shoreline Stabilization must be used unless not technically feasible. This provision combined with the definition of soft stabilization is vague because the definition discusses combined soft and hard. Soft stabilization with plants only is infeasible for almost every property on Lakes Washington and Sammamish due to the long fetch, high wind speed, and resultant crashing waves that have been demonstrated to cause erosion and property damage. Requiring a complicated report (except if house is 10 feet or less from OHWM) is excessive and unreasonable. It is also inconsistent with the State exemption.	**VC, $, PR. Ex**	**38T.348**
349		Rule: Newport Shores Exempt. Under the circumstances, there are no grounds to treat Newport Shores differently than Lakes Washington and Sammamish where	**PR**	**38T.349**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		proof of damaging wave action has been shown.		
350	**p. 15**	c. Options for Soft Stabilization. Provision is incomplete since Chart is not provided. Also, appears to be improperly referring to outside materials, namely Green Shorelines that have not been shown to be compatible with high wave action locations such as Lakes Washington and Sammamish. Inconsistent with State exemption for replacement. Placement of large woody debris in the lakes is a boating hazard and should not be allowed. Item ii. Recognizes that soft stabilization could allow/cause damage to bulkheads on adjacent properties, which is a risk that property owners should not have to bear. The soft stabilization options have not been tested and proven to be effective in high energy situations such as Lakes Sammamish and Washington.	**VC, Inc, Ex**	**38T.350**
351	**p. 15**	d. Options for Hard Stabilization Applying these standards to replacement is inconsistent with State exemptions. The standards are too restrictive and have not been shown to be necessary to avoid harm to the shoreline functions. Requiring a 3:1 sloped rip-rap and precluding 2:1 is arbitrary and not based on any showing of harm. The bioengineering requirements are vague and are not shown to be feasible on high wave action sites.	**VC, Ex, PR**	**38T.351**
352	**p. 16**	e. Location This provision, especially when applied to replacement, is inconsistent with the State exemption and is unsupported by any harm. The	**Ex, PR, I**	**38T.352**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		reference to "special" flood hazard is undefined and vague. The FEMA flood line should only control placement of habitable structures. Placement of bulkheads is a protected activity that is not limited by flood hazard regulation on these Lakes due to the outlet control structures and other features. Replacement in particular does not cause any harm.		
		f. No comment.		
353	**p. 16**	g. Mitigation. This provision is confusing because the primary activity will be replacement of existing bulkhead, and replacement will by definition not cause any permanent harm, and will often cause less harm. These likely impacts should be stated and it should be made clear that mitigation will not be required in those circumstances.	**VC**	**38T.353**
		h. No comment		
354	**p. 17**	i. Expansion of Shoreline Jurisdiction Due to Shift in OHWM This provision recognizes that soft shoreline stabilization may cause erosion to neighboring sites and also cause the retreat of the OHWM. The provision goes on to recognize the resulting expansion of shoreline jurisdiction and allows the City to propose undefined relief. The provision is seriously flawed. Such a change should be considered an artificial and sudden change, which should not alter the OHWM at all since the State definition of OHWM excludes artificial changes. Furthermore, the State definition is designed to capture the same rule as property law, since the OHWM is the property line for most lakefront properties. If OHWM was deemed to have changed,	**PR, I**	**38T.354**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		that would mean the loss of private property, not just a change in shoreline jurisdiction. Furthermore, the State definition does recognize that in some circumstances shoreline permits can change the OHWM, but that appears to apply to the gaining of land due to filling, and not to the loss of land due to artificial changes (to be consistent with property law among other reasons).		
355	**20.25E.080 p. 17**	5. Repair of Existing Shoreline Stabilization a. Minor Repair This provision is duplicative in providing information that is also part of the definitions.	**VC**	**38T.355**
356	**p. 18**	b. Major Repair. Presumption that it is necessary to protect existing structure (and thus, exempt from report showing avoidance not technically feasible) is necessary to avoid excessive and unreasonable results. These provisions appear to be duplicative with New and Replacement provisions, and confusing since the definitions classify major repair as new, and then these provisions address major repair separately. See comments on improper restriction on location and other comments.	**VC**	**38T.356**
357		iv. Improper to provide more favorable rule for Newport Shores.	**PR**	**38T.357**
		6. Voluntary Removal. No comments		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		IV. PROCEDURES **20.25E.100 Review and Appeal Procedures**		
358	**20.25E.100 p. IV-2**	C. General Provisions Applicable to all Shoreline Project Decisions 4.b. This provision is inconsistent with 4.d. because an application is complete when it is filed not on the day when the City determines that it is complete.	**VC**	**38T.358**
359	**p. IV-3**	5. Review Timelines. State law, RCW 36.70B, requires the City to establish timelines, so it is inappropriate to defer this requirement.	**I**	**38T.359**
360		6. Consolidated Review b. This provision is incorrect. A project is not exempt if it contains non-exempt activities, so Process III (Exemptions) does not exist with other shoreline permits.	**I, Ex**	**38T.360**
361		7. This provision should make it clear that findings and conclusions are required.	**VC**	**38T.361**
362		8. Consolidation Issues. This provision seems to mix construction permits with shoreline permits.	**VC**	**38T.362**
		9. Tolling. Helpful provision.		
	20.25E.100 p. IV-5	D. Notice Procedures Applicable to Shoreline Project Decisions No comments at this time.		
	p. IV-8	**20.25E.110 Shoreline Process I – Quasi Judicial Decisions**		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		Applies only to Shoreline Conditional Use Permits, which are generally required for any activity on residential sites. Therefore, no comments at this time.		
	20.25E.110	A. Process Described		
	20.25E.110	B. Public Meetings		
363	**20.25E.110**	C. Director's Recommendation on a Process I Application Although inferred by next provision, this should say that the report must be issued at least 15 days prior to the public hearing.	**VC**	**38T.363**
364	**20.25E.110**	F. Hearing Examiner Decisions on Process I Applications 2. Such new hearings should occur only if the applicant consents to the changes.		**38T.364**
365	**20.25E.110**	G. Appeal of Hearing Examiner Shoreline Process I Decision to City Council 1.g.i. It is inappropriate to require the City Council to accord substantial weight to the Hearing Examiner. No deference is required on legal issues, and otherwise the last sentence is inconsistent with the first sentence which allows the Council to reverse where the Examiner decision is not supported by substantial evidence.	**VC**	**38T.365**
	p. IV-14	**20.25E.120 Shoreline Process II – Administrative Decisions**		
366	**20.25E.120**	F. Appeal of Director's Shoreline Process II Decision The time frame stated is inconsistent with the statute, which is based on notice by Ecology, not notice by the City. This provision should be called "Review of Director's Shoreline Process II Decision," not "Appeal." Technically, it is not an appeal, and calling it an appeal is confusing.	**I, VC**	**38T.366**
	p. IV-17	**20.25E.130 Shoreline Process III – Ministerial Decisions**		
367	**20.25E.130**	A. Process Described		**38T.367**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		The current draft SMP requires substantial decision making to determine that a project is consistent with the SMP and hence eligible for an exemption. This process is potentially much more complicated than originally contemplated by the Act, and is therefore inconsistent with the exemption process being simple, quick, and without the need for substantial review. The substantial decision making required as currently formulated should allow for open record hearing review (not an appeal) before hearing examiner to provide due process before the City makes a final decision.	**I, PR, Ex**	
	20.25E.130	B. Appeal of Director's Shoreline Process III Decision		
		20.25E.140 Legislative Non-Project Actions No comments at this time.		
		V. PERMITS AND DECISIONS **20.25E.150 Shoreline Project Permits**		
368	**20.25E.150**	C. Review Criteria for all Shoreline Applications 2. Height limit of 35 feet. Nothing in the Act or WACs require this provision. Only exempt single family house are so limited.	**I**	**38T.368**
369	**20.25E.150**	D. Filing Permit with Ecology/Attorney General – Content Required 2.This provision is consistent with the WACs because only specified letters of exemptions need to be sent to Ecology. However, the City staff has repeatedly taken the position that all letters of exemption meet this requirement, which is inconsistent with the WACs.	**I**	**38T.369**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
370	**20.25E.150 p. V-2**	E. Revisions to Issued Shoreline Process I and II Permits and Approvals Rule: Requires a new permit or "Shoreline Revision" approval for any amendment to an approved permit. This provision is inconsistent with the WACs which require a permit revision only for "substantive changes" and not for every minor adjustment. This provision refers to WAC 173-27-100, but completely ignores the text: "A permit revision is required whenever the applicant <u>proposes substantive changes</u> to the design, terms or conditions of a project from that which is approved in the permit. <u>Changes are substantive if they materially alter the project</u> in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision." Thus, this provision creates a severe burden to go through permitting for the most minor changes even changes benefitting the environment, and thus the provision discourages beneficial changes which is inconsistent with the Act.	**I, $, PR**	**38T.370**
	p. V-4	**20.25E.160 Shoreline Substantial Development Permits**		
371	**20.25E.160**	A. Substantial Development Permit Required The language is awkward and confusing by stating that this permit is required for "development" and then referencing the exemptions, when the statute provides the proper terminology which is that a substantial development permit is required only for "substantial development." The draft SMP uses "development" to refer	**VC**	**38T.371**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		to different things without a definition and inconsistent to the statute definition.		
	20.25E.160	B. Applicability No comments		
	20.25E.160	C. Purpose No comments		
372	**20.25E.160**	D. Decision Criteria The decision criteria is in error in referring at 1.c to consistency with WAC 173-26, as that Chapter primarily provides guidelines for adopting SMPs and not substantive regulations.	**VC**	**38T.372**
373	**20.25E.160** **p. V-5**	E. Special Shoreline Report Rule: Sets for requirements for this report. It is unclear why this report's requirements are buried in with the Shoreline Substantial Development Permit when the report appears to be more global in scope.	**VC**	**38T.373**
374		4.Use of science. This provision improperly refers to RCW 90.58.100 as that provision contains requirements for the SMP, not for permits. A shoreline substantial development permit is the wrong place to require a complete assessment of all scientific data on the subject. Rather, the SMP should have sufficient information and standards, and if the project was that large, then SEPA environmental review would necessarily address the issues.	**I, $**	**38T.374**
375		5. Submittal requirements		**38T.375**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		b.iv. Refers to outside material that is improper incorporation Refers to Bellevue Urban Wildlife Habitat Functional Assessment Model	**Inc**	
376		b.v.Cumulative impact analysis required The Shoreline Guidelines require cumulative impact analysis for the SMP overall, not for individual projects. This provision crosses the line of SEPA implementation which only requires cumulative impact analysis in an EIS, so this requirement is creating excessive and requirements without any showing of need.	**I, PR**	**38T.376**
377		b.vi.Functions and values assessment The draft SMP nowhere defines or describes the applicable functions and values, calling them functions and processes elsewhere, and so the SMP provides no baseline or measurable standards by which to "assess" impacts. To the extent required for any exempt activity, this provision is inconsistent with the WAC which does not require site specific analysis for exempt activities.	**VC, Inc, PR, I, Ex**	**38T.377**
378		c.iv. Special requirements for setback reductions This provision is particularly excessive since staff testified that the benefits of a larger setback could not be quantified and yet this provision requires quantification.	**VC, PR**	**38T.378**
379		6. Decision Criteria to modify performance standards or reduce a setback It is confusing to have unique decision criteria after having other decision criteria for the permit generally. The criteria here basically creates a	**VC, PR**	**38T.379**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		completely impossible standard by listing six criteria with an "and" so all six criteria must be shown. Yet, a certain proposal may not have features fitting all criteria such as restoration of degraded setback, or benefits to stormwater functions. Otherwise, refer to other comments about the vague and confusing references to functions which are undefined and for which no measurable standards have been identified.		
380		7. Assurance Device This provision appears to demand assurance devices, bonding, for conditions of approval, thus greatly expanding the assurance device to mere conditions instead of specific mitigation. This excessive expansion is unfettered and problematic since many conditions of approval are expensive features of the project that would create prohibitive bonding requirements that would kill the project.	**VC, $, PR**	**38T.380**
381	**20.25E.160**	F. Effective Date This provision is inconsistent with RCW 90.58.140.	**I**	**38T.381**
382	**20.25E.160**	G. Commencement of Activity This provision is inconsistent with RCW 90.58.140.	**I**	**38T.382**
	p. V-10	**20.25E.170 Exemptions from Shoreline Substantial Development Permits**		
383	**20.25E.170**	A. Purpose The State exemptions are not limited to minor projects as stated in this provision.	**I, Ex**	**38T.383**
384	**20.25E.170**	B. Letter of Exemption Required		**38T.384**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		The language is in error in referring to paragraph B, when paragraph C was intended. This provision states that the letter of exemption is required according to Chapter 173-27 WAC, but this section fails to properly implement those regulations. Letters of exemption are required only for specified projects namely Rivers and Harbors Act Section 10 and Clean Water Act Section 404 projects, and not for every exemption project. The requirement is for notice purposes only and not for any substantive purpose. Adding additional shoreline permit requirements is inconsistent with the WAC.	**VC, I, Ex**	
385	**20.25E.170**	C. Letter of Exemption from the SSDP Requirements – Projects and Activities Described These provisions are based on "development" as defined in the Act, but the draft SMP implements various meanings though no other definition is given.	**VC**	**38T.385**
	20.25E.170	D. Application and Interpretation of Exemptions No comments at this time.		
	20.25E.170	E. Effective Date See above.		
	20.25E.170	F. Commencement of Activity See above.		
	p. V-16	**20.25E.180 Shoreline Conditional Use Permit** No comments at this time.		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
	p. V-19	**20.25E.190 Shoreline Variance** No comments at this time.		
	p. V-21	**20.25E.200 Amendments to the Text of the Shoreline Master Program** No comments at this time.		
		VI. ADMINISTRATION AND ENFORCEMENT **20.25E.250 Administration**		
386	**20.25E.250**	C. Administrative Provisions Specific to the Shoreline Master Program 2. This provision should be modified to be consistent with the Act. RCW 90.58.143 allows the City to establish different time periods. For example, shoreline permit with a preliminary long plat should be good for five years to ensure consistency between the two permits.	**I**	**38T.386**
387		6. iii. This is confusing since the Act does not contemplate automatic extensions, though the time limit can be longer as just noted.	**VC**	**38T.387**
388		**20.25E.260 Enforcement** This section improperly incorporates outside code, and confusingly so, since the reference is to 20.40.450, which is only the statement of violation and not the procedures. If the intent is to incorporate the City's code enforcements procedures, then the provision is inconsistent with the Act and the WAC.	**Inc, I**	**38T.388**
		20.25E.270 Interpretation		
		No comments at this time.		

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
	20.25E.280	**20.25E.280 Definitions Specific to the Shorelines Overlay**		
	p. VI-3			
389		Aquatic Lands. Awkward definition because includes shorelands which are the drylands 200 feet landward of OHWM, and will create confusion with Aquatic Environment which excludes dry land.	**VC**	**38T.389**
390		Associated Wetlands. Reference to tidal waters is imprudent since none occurs in Bellevue. Provision should be consistent with state law which requires designation by Ecology which Ecology did by regulatory maps. RCW 90.58.030.	**I**	**38T.390**
391		Dock, Existing. Improperly limits definition by adding undefined phrase "kept in good working order."	**VC**	**38T.391**
392		Ecological Functions. This provision is vague and provides no guidance or direction to the regulated public. The City must identify the regulated ecological functions for the lakes, and should not continue to defer that important requirement.	**VC**	**38T.392**
393		Height. This definition is missing the related definition of "average grade level" from the WAC.	**I, VC**	**38T.393**
394		OHWM. The definition fails to include the entire statutory definition from the Act, and must include: "PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water."	**I**	**38T.394**
395		Public Access. The definition of public access improperly includes visual access as public access which is confusing and potentially in conflict with state	**VC, I**	**38T.395**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

No.	Ref.	Comments	Concern Category	
		regulations for public access on public property. Views of the water are an important consideration under the Act, but not as public access.		
396		Shorelands. This definition is missing the related definition of "floodway" from the Act, namely that floodways do not include lakes controlled by outlet control devices.	**I**	**38T.396**
397		Visual Access. This newly created definition is awkward because view of the shoreline is to be considered in shoreline decisions, but this definition redefines view as needing "improvements" when many people have a view from their yard.	**VC**	**38T.397**

Concern Categories Key: VC – Vague/Confusing Ex – Exempt $ -- Costly PR – Property Rights I – Inconsistent w/ WAC Inc – Incorporation, M – Micromanaging

Charlie Klinge,	spoke representing the Washington Sensible Shorelines Association. He said he had been tasked by the Association with reviewing the draft Shoreline Master Program regulations and preparing line-by-line comments addressing any and all concerns. He presented to the Commission a 97-page document containing 400 individual comments on specific provisions in the draft. He said he has 20 years experience as a land use attorney and 15 years experience in working with Washington shoreline master programs. Based on his experience, he proposed that the draft Shoreline Master Program is fundamentally flawed on numerous levels. It is too big, the regulations are too complicated, and staff has tried to include way too much. The biggest fundamental flaw is that the draft includes incredibly detailed regulations that govern every minute aspect of home construction, all with the purpose of accomplishing the newest planning ideals. The approach might work somewhere else, possibly in a new city without any development, but not in Bellevue where the entire shoreline of the three regulated lakes is already developed as urban neighborhoods. It will simply not be possible to turn the clock back 200 years and retroactively create sensitively designed homes, especially not on small existing lots. State law specifically does not require such a radical approach. The focus should be on practical reality rather than an ideal planning experiment. Staff justified its flawed approach by relying on flawed science. Dr. Pauley pointed out that the city relied on stream science and saltwater science in determining what should be done on the city's freshwater lake shorelines. The result is ecological functions that conflict with each other and which would actually harm salmon if followed. Homes on the shorelines have done little or nothing to harm salmon; however, the non-native bass like to hang out under docks on Lake Sammamish and Lake Washington where they occasionally eat small salmon. The strict dock regulations are actually needed to fix a problem caused by non-native fish. The regulations would not be needed if the non-native fish were not there. The draft calls a landscaped yard a vegetation conservation area, which is better known as a buffer. The regulations presume that the yard will function as a natural shoreline. That in turn justifies shoreline enhancement to compensate for the assumed harm to the vegetation conservation area no matter how trivial a project. That premise, however, is wrong. Building something in a landscaped yard or on a patio is not the same as clearing native vegetation from a natural site. When regulations are disconnected from fixing actual problems, the effect result is a solution in search of a problem. Another name for it would be interference with property rights, or a taking of property without just compensation. United States Supreme Court Justice Anthony Scalia in a majority opinion stated that when land use regulations impose conditions that are unconnected to any legitimate harm, the result is out-and-out extortion. The high court declared as unconstitutional regulations that fail the nexus and rough proportionality test in Nolan vs. California Coastal Commission and in Dolan vs. City of Tigard. State cases and state law goes further and imposes the burden on government to demonstrate an adequate connection between harm and mitigation. Asked by the Commission when it would look at the issue of interfering with property rights, the staff had no response. The fact is the regulations have no connection to any	**38V.1** **38V.2** **38V.3** **38V.4** **38V.5** **38V.6** **38L.7**

	real harm. He said his letter submitted to the Commission on behalf of the Washington Sensible Shorelines Association contained a cover letter and a table of detailed comments. In the letter there are some important general comments and a listing of categories of concern, including vague or confusing regulations; inconsistencies with shoreline guidelines; failure to respect exempt activities, such as bulkheads protecting single family homes; expensive permitting requirements; unnecessary micromanaging; improper incorporation of outside materials; and interference with property rights. Each of the 400 comments is folded into one or more of those categories of concern. A major overhaul is needed to correct all of the problems. Washington Sensible Shorelines Association created its sensible plan to promote solutions for the major issues, and the organization looks forward to working with the Commission in addressing the issues and creating an Shoreline Master Program that will represent a reasonable and responsible approach to shoreline planning and regulation that respects property rights.

To: Bellevue City Planning Commission

May 25, 2011

RE: Shoreline Management Program Public Hearing

I have lived on Lake Sammamish for over 40 years.
I've been attending all of the shoreline planning commission meetings for the last two years, have spent hours reading the regulations and have attended the open house. Like many of my neighbors I have many concerns.

1. I'm concerned about the way the Shoreline Update Process has evolved

First of all, many of us feel deceived by the City when all of Bellevue's shorelines were declared critical areas a few years ago - thus imposing critical area regulations on the shorelines by what seems a covert process. Although we have been told there was ample public input – I have talked with dozens of my neighbors who knew nothing about this – until some time later residents came across this fact when trying to get a permit to do something on their property. 39.1

The current process continues to be disappointing because:

-rather than spending time defining the program goals and objectives,
the focus by staff has been in producing detailed regulations

-rather than making any effort to provide education and incentives.
the process has taken the course of regulating property owners into compliance 39.2

This process has created complex prescriptive requirements that put the onus on residents to justify any deviation, at considerable effort and at considerable expense

The same consultant who was instrumental in preparing such documents as the City of Bellevue's Shoreline Restoration Plan, also participated in the development of the regulations, and is receiving referrals to do work for homeowners to comply with these regulations – raising a concern for conflict of interest.

And finally,

-- this process focuses on the shoreline residents in a vacuum without addressing some of the larger more egregious issues such as storm water run-off, or ineffective management of water levels. It is disheartening that our City is not working harder to address these problems within its own departments or other jurisdictions.

2. I'm concerned about the use of Science

The staff has presented multiple scientific presentations to illustrate the scientific basis for the guidelines – yet it is acknowledged that most of their science deals with streams, not an urban lake. 39.3

Residents have presented credible counter-arguments to this science – but these have not received any recognition, and upon requesting a response - we finally heard that "no one is going to agree on the science." So it appears that very restrictive regulations are going to be imposed on homeowners based on unsubstantiated scientific justification. This concerns me.

We've been given primarily observational scientific data – such as the observation that salmonids tend to swim around over water structures. But as a physician and a scientist, I know that observational data is inferior to outcome data. Why are we not looking at outcomes and what are we trying to measure?

For instance, a simple question would be – are adequate salmon making it from the Issaquah fish hatchery through Lake Sammamish and Lake Washington to the locks?

I tried to find some answers independently and looked at the Salmon Bay Estuary Synthesis Report (1) which states

"Hatchery production goals are 2.1 million Chinook for Issaquah Creek Hatchery".... It then goes on to say "A conservative estimate of approximately .... two million hatchery Chinook likely make their way through the Locks into Salmon Bay and Puget Sound on an average annual basis." This is data from 2008 (2)

How much of a negative impact are Bellevue's shorelines really inflicting? What are we trying to accomplish?

Before imposing highly restrictive regulations on property owners that severely restrict what they can do on significant portions of their property – there should be
credible reasons based on credible science and not just theoretical rationalization.

3. I'm Concerned about the interpretation and Application of Ecological Function

The City's own shoreline restoration plan (1) cites "the ecological function of the Lake Sammamish shoreline is of low/moderate value."

39.4

---yet the City seems to have interpreted the mandate of "no net loss of ecological function" to mean restoration of ecological function to some level that existed years ago. This is inherent in the regulations where there are numerous mandates that impose this - for example – if a homeowner needs to remove a hazardous tree, he must plant 3 new trees to replace the one removed

--and what ecological justification is there to impose a 50 foot setback – especially knowing that about 40% of Bellevue residents' homes on Lake Sammamish are in this setback and will therefore be nonconforming 39.5

I'm concerned that the City appears to use a subjective assessment of our shorelines as the baseline for ecological function but yet requires homeowners to spend considerable money to provide a detailed site specific assessment of ecological function for any variation. 39.6

Why should you be forced to plant 60% of your shorefront in native vegetation as a mitigative action. This severely limits one's ability to enjoy and utilize their property for recreational and personal use. It is highly unlikely these actions will affect salmon prosperity - but then staff implies 39.7

this would be important for other ecological functions such as wildlife and hydrology. I would challenge that the same benefits could be obtained by other options – such as maintaining a portion of your property behind your house and not between you and your waterfront in native vegetation, which by the way many homeowners do. But – that would be something you as a homeowner would need to spend thousands of dollars to prove.

I, along with many of my neighbors, have many other concerns:

We're concerned about **safety issues** – such as promoting wildlife in our backyards, or being asked to build unsafe narrow walkways on docks. **39.8**

We're concerned about **impacts to our property values** – in that we will be limited in our ability to develop and improve our properties, especially if we have an undeveloped site **39.9**

We're concerned about the many **costs** spelled out in these regulations – such as for permits, costs of hiring consultants to get variations, costs of planting and maintaining vegetation that we don't want in the first place, **39.10**

And finally, I'm Concerned about the Lack of Respect for Property Rights **39.11**

We are being asked to restrict the use of our properties for broad and ill-defined wildlife and ecological benefits. Shoreline residents have bought and developed their property at considerable expense, and have paid hefty taxes, to be able to enjoy those activities unique to living on the water. These regulations are intended to severely limit those rights, and should not be taken away lightly.

Submitted by Sandra C. Rice MD
312 W. Lk. Sammamish Pkwy NE
Bellevue, WA 98008

1. Salmon Bay Estuary Synthesis Report
Including Assessment of Proposed Daylighting Wolfe Creek Project
Lake Washington, Cedar, Sammamish Watershed (WRIA 8)

2. Celedonia et al. 2008, Kiyohara and Volkhardt 2007, 2008 – referenced in No. 1 above.

3. WORKING DRAFT CITY OF BELLEVUE **SHORELINE RESTORATION PLAN January 2011**
Prepared for:
City of Bellevue
Development Services Department
450 110th Avenue Northeast
Bellevue, WA 98009
Prepared by:
The Watershed Company
750 Sixth Street South
Kirkland, WA 98033

Dr. Sandra Rice	she has lived on the lake for her entire life. She said like many, she has concerns with the plan and the way the process has evolved. Many property owners are frustrated and upset by the fact that just a few years ago the city declared that all lake shorelines are critical areas and imposed regulations on the shorelines based on that declaration. While it was said that the action involved ample public input, few shoreline property owners knew anything about it until they sought a permit from the city. The current process continues to be disappointing; rather than spending time to define program goals and objectives, the focus has been on producing detailed regulations. And rather than make an effort to provide education and incentives, the focus is on regulating property owners into compliance. The process has created complex and prescriptive requirements that put the onus on the residents to justify any deviation at considerable effort and expense. In addition, the process focuses on shoreline residents in a vacuum without really looking at some of the more egregious issues, such as stormwater runoff or the ineffective management of water levels. It is disheartening that the city is not working harder to address the issues within its own departments as well as with other jurisdictions. The science on which the regulations are based is troublesome. The staff made multiple presentations to illustrate the scientific basis for the guidelines, yet as has been previously acknowledged, most of the science deals with stream science, not urban lakes. The residents have presented credible counterarguments to the science, but they have not received any acknowledgement or recognition. When pressed for a response, the answer given was that not everyone will agree on the science. From that it appears the restrictive regulations will be imposed on homeowners based on unsubstantiated science. Observational data has been relied on, even though it is inferior to outcome data. One simple question would be are adequate numbers of salmon making it from the Issaquah hatchery through Lake Sammamish and through Lake Washington to the locks. The Salmon Bay Estuary Synthesis Report states that the hatchery production goals are 2.1 million Chinook for Issaquah Creek Hatchery. It goes on to say that a conservative estimate of approximately two million hatchery Chinook likely make their way through the locks into Salmon Bay and into Puget Sound on an average annual basis. That would seem to indicate that Bellevue's shorelines are having a minimal impact on the salmon, which in turn raises questions about what the Shoreline Master Program is trying to accomplish. The interpretation and application of ecological function is also concerning. The city's own shoreline restoration plan states that the ecological function the Lake Sammamish shoreline is of low/moderate value, yet the city seems to have interpreted the mandate of no net loss to mean restoration of ecological function to some level that existed years ago. That is inherent in the regulations in the form of numerous mandates. For example, if a homeowner needs to remove a hazardous tree, the homeowner must plant three new trees to replace the one that was removed. There is no ecological justification for imposing a 50-foot setback, especially given that 40 percent of the homeowners on Lake Sammamish have structures that are behind the arbitrary line. The city appears to be using the subjective assessment of the shorelines as the basis for ecological functions, yet will require homeowners to spend considerable amounts of money to provide detailed site-specific assessments of ecological functions for any variation.	**39.12** **39.13** **39.14** **39.15** **39.16**

	The requirement to plan 60 percent of individual property shorefronts in native vegetation as a mitigative action will severely limit the ability of property owners to enjoy and utilize their properties for recreation and personal use. It is highly unlikely that such actions will affect salmon prosperity. Staff has argued that the requirement will prove beneficial to other ecological functions, such as wildlife and hydrology, though the same benefits could be obtained through other means, such as maintaining the area of properties behind homes in native vegetation. Of course, a property owner would need to spend thousands of dollars proving the point in a special variance report.	**39.17**
	Property owners are concerned about safety where wildlife habitat is enhanced through vegetative plantings, and where narrow walkways to docks are required.	**39.18**
	Property owners are concerned about impacts to property values resulting from limitations on the ability to develop and improve properties. There are concerns about the many costs that are spelled out in the regulations for permits, hiring consultants, and planting and maintaining vegetation.	**39.19**
	There are also concerns about the general lack of respect for property rights. The shoreline owners are being asked to restrict the use of their properties for broad and ill-defined wildlife and ecological benefits. Shoreline residents have purchased and developed their properties at considerable expense and have paid hefty taxes to be able to enjoy the activities unique to living on the water. The regulations are intended to severely limit those rights and should not be taken away lightly.	**39.20**
	The sensible plan should be supported.	**39.21**

SCOTT AND ANNA MARIE CLAYHOLD
11041 SE LAKE ROAD
BELLEVUE, WA 98004

May 24, 2011

City of Bellevue
Planning Commission

Re: This letter is to be delivered verbally by me at the Shoreline Management Public Hearing on May 25, 2011. I am typing and submitting it for the record.

Dear Commissioners,

I am Anna Marie Clayhold and I live at 11041 SE Lake Road in Bellevue. Our home sits on Lake Washington waterfront. I am a property owner who pays property tax to this City. I am a Financial Officer for and co-owner of a small business and pay income tax and B&O tax. I truly appreciate all the City of Bellevue offers those of us who live here. However, I am feeling less and less that Bellevue is a land of the free; less and less that it is concerned about the safety of and quality of life for its citizens. When I am expected to understand a document that is more than 350 pages before I can consider doing something ordinary in my yard that others in my own city who do not live on the water do not have to consider, my freedom is taken away. When I am told that I have to ask and then wait to hear back to repair something broken on my property, I no longer feel the agenda of my City officials is looking out for my family's safety. I have read and support the WSSA's Sensible Plan. **40.1** **40.2**

My most important role is that I am a mom. When we shopped for our home, having a yard where I could see my children and their friends at play was one of my top priorities. Since living in our home, we have enjoyed a clear view of our play yard to our waterfront. Even more than in our former home, with a lake now adjacent to our yard, I always have my eyes on my children when they are outdoors. Should I be required to plant away my view to their activities, it would limit my ability to oversee their safety. Tonight you may have noticed that my young daughters arrived to this meeting with wet hair. It is a huge time commitment, but they are on a swim team practicing five nights a week so that I know they have the best swim skills. This is because it is my utmost concern that they be safe on our property. When it is suggested that I be required to plant away my view to their water activities, and the activities of others, I will add, because I have assisted people of this City who have capsized in the lake, the City is not paying heed to the safety of its citizenry. The motto of our City of Bellevue Police is "Providing a safe environment through community involvement and innovation". I suggest the Council Members and Commissioners of the City should direct their elected and appointed powers based on that same motto; based on safety. **40.3**

Beside the limitation of my view being a safety concern, trees along shorelines are inherently unstable; another safety concern is they could topple on us or our house. Especially if I was forced to change my existing boulder bulkhead, the trees could be subjected to high water annually, as is the current situation on Lake Sammamish and Phantom Lake. Waterfront trees are a safety problem and should be avoided. I even wonder that the City staff must recognize this since they would require landowners to sign a hold-harmless agreement in order to obtain a permit to plant the required trees. **40.4**

The proposed planting plans say a typical parcel would have seven or eight tall trees in the waterfront area, and that they could be placed in one corner of the proposed vegetated buffer. Truly, with our yard's significant water table at the lakefront, if I did such dense planting, the trees would grow rapidly and would "starve" each other due to lack of space. They would become problematic very soon, leaving me with the safety liability. So again, I plead, that the Commissioners and Council Members direct their elected and appointed powers based on safety, as well as sensibility. **40.5**

I'll close with a question. Besides wondering why the creation of the proposed regulations neglected to consider water or waterfront safety, especially for children, what are these required trees going to accomplish? If you are out on the lake, the shore already looks stunningly beautiful with trees around and behind the lake homes; trees on hillsides around the lake. And based on the number of fishermen out each weekend, there are abundant fish. We are in a community that already appreciates trees without being forced, controlled and left without inherent freedoms on their own property. Scientifically, as Dr Pauley pointed out in a previous presentation to the Commission, trees on large bodies of water, especially given our terrain and lake orientation, will not cool large lakes and fish do not depend upon any insects from them for sustenance. My ¾ acre property already has a forest of more than a dozen trees behind it to the road. Again, what are these required trees along my waterfront going to accomplish? **40.6**

Thank you and please remember my request that you specifically and diligently consider safety and sensibility,
Anna Marie Clayhold

Anna Marie Clayhold	her home is situated on the shoreline of Lake Washington. She said she pays substantial property taxes, and as a small business owner also pays B&O taxes. Bellevue is feeling less and less like the land of the free. The city appears to be less and less concerned about the quality of life for its citizens. It is not reasonable to expect homeowners to understand a 350-page document before considering doing anything in their yards that property owners in other parts of the city can do in their yards without restriction; when that occurs, the freedoms of shoreline property owners are effectively taken away. When property owners are told they must ask the city and wait to hear back before repairing something on their properties that is broken, they cannot conclude that city officials are looking out for the safety of the residents. The Washington Sensible Shorelines Association sensible plan is supportable. She said she has children and as such needs a clear view of the area between the house and the waterfront. If required to plant native vegetation in that area, her ability to oversee their safety will be impaired. The motto of the Bellevue police department is to provide a safe environment through community involvement and innovation; the city's elected and appointed officials should adopt the same motto. In addition to trees along the shoreline blocking views, they are inherently unstable and could topple on children at play, especially if existing bulkheads are required to be removed, which would expose the trees to high waters and wave action. The city staff must recognize the danger of waterfront trees since they are requiring landowners to sign a hold harmless agreement in order to obtain a permit to plant the required trees. The proposed planting plan indicates that the typical parcel would have seven or eight tall trees along the waterfront, though they could be placed in one corner of the proposed vegetative buffer; that, however, could result in the rapid growth of the trees which would then starve each other due to lack of space, creating a safety issue. Bellevue as a community appreciates and values trees and should not be forced to plant more along the shorelines; they will not serve to cool the lake waters in the summertime, and the fish will not depend on insects that might fall off of them into the water.	**40.7** **40.8** **40.9** **40.10**

KALLY C., 8 YEARS OLD
11041 SE LAKE ROAD
BELLEVUE, WA 98004

May 24, 2011

City of Bellevue
Planning Commission

Re: This letter is to be delivered verbally by me at the Shoreline Management Public Hearing on May 25, 2011. I am typing and submitting it for the record.

Dear Commissioners,

I am Kally and I live at 11041 SE Lake Road in Bellevue. I am in 3rd grade. I don't understand why you want to take away so much of my backyard. Our lawn is pretty and my parents are very careful how they take care of it. It is unfair that you want to take away what some families can do with their backyards. It would only be fair if you took away part of everyone's backyard, but that doesn't make sense either. The scientists that I have heard at these meetings haven't been able to explain any good reason to me. **41.1**

Also, if wildlife is encouraged, I am really worried about my little neighbor friend who is 1 year old. She is already afraid of dogs sometimes and coyotes would be even more scary and could really hurt kids. **41.2**

Thank you,
Kally C.

Callie Clayhold	she did not understand why the city wants to take away so much of her backyard. The lawn is pretty and her parents are very careful in taking care of it. It is unfair that the city wants to take away what some families can do with their backyards. It would only be fair if the city took away part of everyone's backyard, but that would not make sense either. The scientists at the meetings have not been able to give good explanations or reasons. If wildlife is encouraged, small children may be scared or hurt.	**41.3** **41.4**

CASSIE C., 6 YEARS OLD
11041 SE LAKE ROAD
BELLEVUE, WA 98004

May 24, 2011

City of Bellevue
Planning Commission

Re: This letter is to be delivered verbally by me at the Shoreline Management Public Hearing on May 25, 2011. I am typing and submitting it for the record.

Dear Commissioners,

I am Cassie and I live at 11041 SE Lake Road in Bellevue. I am in 1st grade. I like my backyard and feel safe knowing my parents can see us when we are playing in our play yard or by the lake. If we have to plant trees by the water, I would not feel safe playing on the beach. I don't understand why you want to make my yard unsafe. **42.1**

Thank you,
Cassie C.

Cassie Clayhold	likes her backyard and feels safe knowing her parents can see her when she is playing in the backyard or by the lake. If trees must be planted by the water, it will not be safe to play on the beach. She said she did not understand why the city wants to make her yard unsafe.	**42.2**

To: Bellevue Planning Commission

Subject: Draft SMP Comments for the SMP March 25 Meeting Record

The 350+ page draft SMP details requirements beyond and often duplicates what the state or other agencies requires. Just the extreme size of the SMP should be your first clue. Why is the city significantly exceeding state requirements to the detriment of shoreline residents? **43.1**

For Phantom Lake, the staff **has not** demonstrated or justified the need for implementing the proposed SMP requirements, nor have they detailed or quantified what adverse impacts would result if these requirements were not implemented.

My recommendation is to exempt Phantom Lake from the draft SMP and commit to work with the residents of Phantom Lake to formulate a more relevant SMP. **43.2**

As residents on Phantom Lake, we offer the following general comments, as specifics would take an excessive amount of time/space.

1. Development on Phantom Lake is nowhere near the density as Lakes Washington or Sammamish. Current zoning prevents increased density and the majority of lots are already developed. Staff has consistently refused to recognize this fact and moreover, has not demonstrated the need (what is the expected gain) to impose these requirements on this lightly developed lake. **43.3**

2. The Commission has been told many times over the past years, Phantom Lake is significantly different from either Lake Washington or Lake Sammamish. The requirements outlined in the SMP are not applicable to Phantom Lake. For example, it does not have salmon nor powerboats so the dock requirements should not apply. Some of the requirements, such as 4 ft. walkways, can be unsafe, grating is not required as there are no salmon. Dock sizes on Phantom Lake are small already, there is no need for specifying the various "trades", piling depths, etc. Forcing deciduous tree plantings along the shoreline only adds to the high adverse algae producing phosphors loading. In drafting the SMP, staff has ignored inputs from Phantom Lake residents, especially those regarding our concerns with respect to water quality. **43.4**

3. Extending setbacks beyond what was established in 1974 (25 ft.) prevent residents from installing simple improvements such as fire pit, fence, simple structure, landscaping of their choice, etc. Having to adhere to the proposed requirements in the SMP puts undo restrictions on Phantom Lake residents. If one were to bother to take notice, there is relatively little "development" immediately on the lakeshore already so the increased proposed set back requirements are not necessary. There is no push for intensive shoreline development. The residents only want to do minor improvements/maintain what they already have. To do so under the draft SMP would put unneeded and undo cost and limitations on the residents. City staff has not demonstrated the "gain" for implementation of a larger set back nor have they detailed/quantified any adverse impacts for leaving the 25 ft. set back as is.

March 25, 2011

4. Conservation vegetation buffers are not requirements on Phantom Lake. A simple inspection of the shoreline will immediately demonstrate that the majority of the shoreline is already in a "natural" state. As stated previously, this lake is nowhere as developed as the other lakes and having the city mandate the type/location of vegetation that a resident may/must have and requiring permits/bonds to maintain it is an expense the (mostly retired) residents do not need or can afford. These, and proposed deed restrictions for natural vegetation only lead to reduced property values. Where is the "gain"? The requirement for vegetation conservation buffers has not been demonstrated. **43.5** **43.6**

5. Bulkheads are not an issue on Phantom Lake, there are only two, low small ones at the East end of the lake. There is no need for such requirements. Soft scaping may not work and will allow increased erosion of the shoreline along the eastern, downwind, end of the lake. Feasibility studies for these or alternatives can be extremely expensive and would not provide any defined advantage over current bulkheads. **43.7**

6. As the city has allowed the OHWM to increase through continued unconstrained inflow under SE 24th St. and constrained outflow, shoreline properties are now being flooded more and for longer periods. This adversely impacts the proposed set back/conservation areas reducing usable property (and value) as OHWM is used as a reference. In addition, the continued higher water level is causing trees near the shoreline to die (This year I personally had a cedar fall and have a cottonwood leaning 30 degrees with dead/dying branches in the top ready to fall.) The City needs to address the cause of extended flooding and not allow the SMP to further adversely impact property values. The SMP totally ignores high water and water quality issues. **43.8**

7. Applying "critical areas" standards on Phantom Lake basically takes away any continued common and normal usage of shoreline property. This would significantly adversely impact property values and impose unreasonable demands and limitations on property owners. Who would want to buy a property in a designated "critical area"? Why would staff want to impose such restrictions on Phantom Lake residents? There is no documented justification for doing such a thing. Staff has to recognize we can't go totally back to nature. **43.9**

8. By applying the draft SMP requirements to Phantom Lake, City Staff is trying to make "one size fits all" which is not appropriate. Recently a number of documents have been located that state Phantom Lake is specified as a "water detention site". Legislation exempts detention sites from many of the regulations that are being applied to Phantom Lake. **43.10**

Exempt Phantom Lake from this SMP and develop one specifically for Phantom Lake.

Norman + Gale Baullinger

Norman and Gale Baullinger
16226 SE 24th St
Bellevue, WA 98008

Norman Baullinger	support for the comments made by the Washington Sensible Shorelines Association representatives and for their sensible plan.	**43.11**
	He said the 350-page draft Shoreline Master Program details requirements above and beyond what the state or other agencies requires, and also duplicates functions controlled by other agencies.	**43.12**
	The city should not exceed the state requirements to the detriment of shoreline property owners. He suggested that Phantom Lake should be exempted from the Shoreline Master Program, and the city should commit to working with the Phantom Lake residents in formulating a more relevant document for that shoreline.	**43.13**
	Development on Phantom Lake has nowhere near the density the shorelines of Lake Washington and Lake Sammamish have. The current zoning minimizes all the existing lots that have been developed; there are only half a dozen lots or so on Phantom Lake that could still be developed. During the update process, the Commission has been given input regarding Phantom Lake by property owners making the point that the lake is significantly different from both Lake Sammamish and Lake Washington. It has no salmon, so the requirements aimed at helping the salmon should not apply.	**43.14**
	There are no powerboats on Phantom Lake, so there is no need for large docks and their associated pilings. The draft seeks to force the planting of deciduous trees along the lakeshore, but given that the lake is in a peat bog and has a high phosphorous level, planting new trees will only add to the phosphorous loading, making the algae problem worse.	**43.15**
	Water quality in Phantom Lake is an issue that has been ignored by the city for many years. Most structures along Phantom Lake are already well set back from the shoreline, so the setback requirements are not applicable. Well over half of the shoreline is already in a natural state relative to vegetation. City staff have not demonstrated any gain to be obtained from implementation of the proposed requirements. The city has allowed the ordinary high water mark to rise on Phantom Lake by not constraining inflows and by not maintaining the outflow.	**43.16**

Scott Sheffield	attended most of the study sessions on the Shoreline Master Program. He said the want and the need to protect the lakes is shared by all waterfront property owners. The property owners have as much if not more vested in seeing the lakes healthy for the enjoyment of everyone. For most, their lake properties represent their most valuable asset and is their source of pride. That is why so many have been actively involved in commenting on the Shoreline Master Program update. The input from the citizens may have been heard, but it is not acknowledged in the draft document.	**44.1**
	The draft fails to create an effective and workable Shoreline Master Program; the document needs to be overhauled with an eye on being sensible. The draft does not have a well-defined set of objectives and benefits that can be measured. Future Shoreline Master Programs will be different as over time the effects of the regulations are measured.	**44.2**
	The proposed draft includes no program for monitoring over time.	**44.3**
	The staff and the Department of Ecology appear to be willing to measure success in terms of bulkhead and dock removal and an increase in shoreline vegetation. It has not been shown that a 50-foot buffer will improve water quality over a 25-foot setback.	**44.4**
	Non-point source runoff from the city's storm drains should be measured and addressed. All rules and regulations should be monitored and evaluated to determine if they are effective.	**44.5**
	The mailer the city sent out to residents stated that very few existing structures would become nonconforming, but in reality every pier that has a walkway wider than four feet, platforms within 30 feet of the shoreline or in less than nine feet of water, platforms larger than 350 square feet, walkway pilings larger than eight inches in diameter, pilings within 30 feet of the ordinary high water mark, non-graded decking, and lifts closer than 30 feet from the shoreline will all become nonconforming; that would mean the vast majority of the piers in the city.	**44.6**
	Bellevue's dock code is duplicative; the city does not need to duplicate the regulations imposed by the Corps of Engineers, nor does it need to establish mitigation standards, which the Corps already does.	**44.7**
	The regulations with regard to repair and replacement make no sense in the real world. Replacement is a form of repair and citizens should be able to properly repair their properties. Restricting repairs to only part of a structure will lead to necessary repairs in future years. Docks need to be maintained in order to both safe and useful. Walkways should be designed to safely accommodate people; a three-foot walkway is unsafe and impractical for both children and adults. The Washington Sensible Shorelines Association has been involved in the discussions with the city and the Commission. Hopefully everyone will be able to work together in creating a sensible plan for the city that is not based on conflicting science, one that will truly improve the lakes and retain them as assets everyone can be proud of. The sensible plan should be supported.	**44.8** **44.9**

May 25, 2011

To: Bellevue Planning Commission
From: Wm. Rahr, President, Phantom Lake Homeowners Association
Sub: Phantom Lake Flooding Conditions

Commissioners,

An early restoration attempt for Phantom Lake failed after excessive uncontrolled storm water run off into the lake occurred in the 1980's from the I-90 Business Park. As more of the Business Park was developed, extended periods of flooding and high water lake level fluctuations began to destroy shorelines and vegetation. Long-term corrective action needs to be implemented to establish healthy shoreline conditions again, such as those prior to the Business Park development. This includes both water quantity as well as quality.

The two major under designed detention ponds A and B, must be brought up to standards capable of detaining more water during major storm events. Maintenance standards need to be reviewed with primary concern addressed for removal of sediment buildup to maintain volume capacity. Pond C is a water quality facility that needs strict control of maximum volume capacity. Regular silt buildup and plant material removal is necessary. The downstream conveyance systems, including the inlet ditch to Phantom Lake, need corrective action for flow control. **45.1**

The consequences of rapid lake water level rise is the restriction of not allowing excess surface water to spread out in the adjacent Lake Hills green belt area, as it did prior to the 1985 restoration. A berm was constructed between the shoreline and the greenbelt at that time, to prevent the flow of high water from flooding SE 156th Ave. Consideration should be given to the reconfiguration of two adjacent areas of the wetlands for emergency over-flow water storage with slow release back into the lake. **45.2**

The outlet ditch from Phantom Lake to SE 168th Ave. is overdue for extensive maintenance and cleaning, as was done by the City in 1997. The under sized culverts beneath 17th Pl. and 18th St. need replacement. The present weir is inoperable and needs removal with replacement closer to the lake. The outlet stream from SE 168th Ave. down to Lake Sammamish has been reconstructed and improved by the City several years ago.

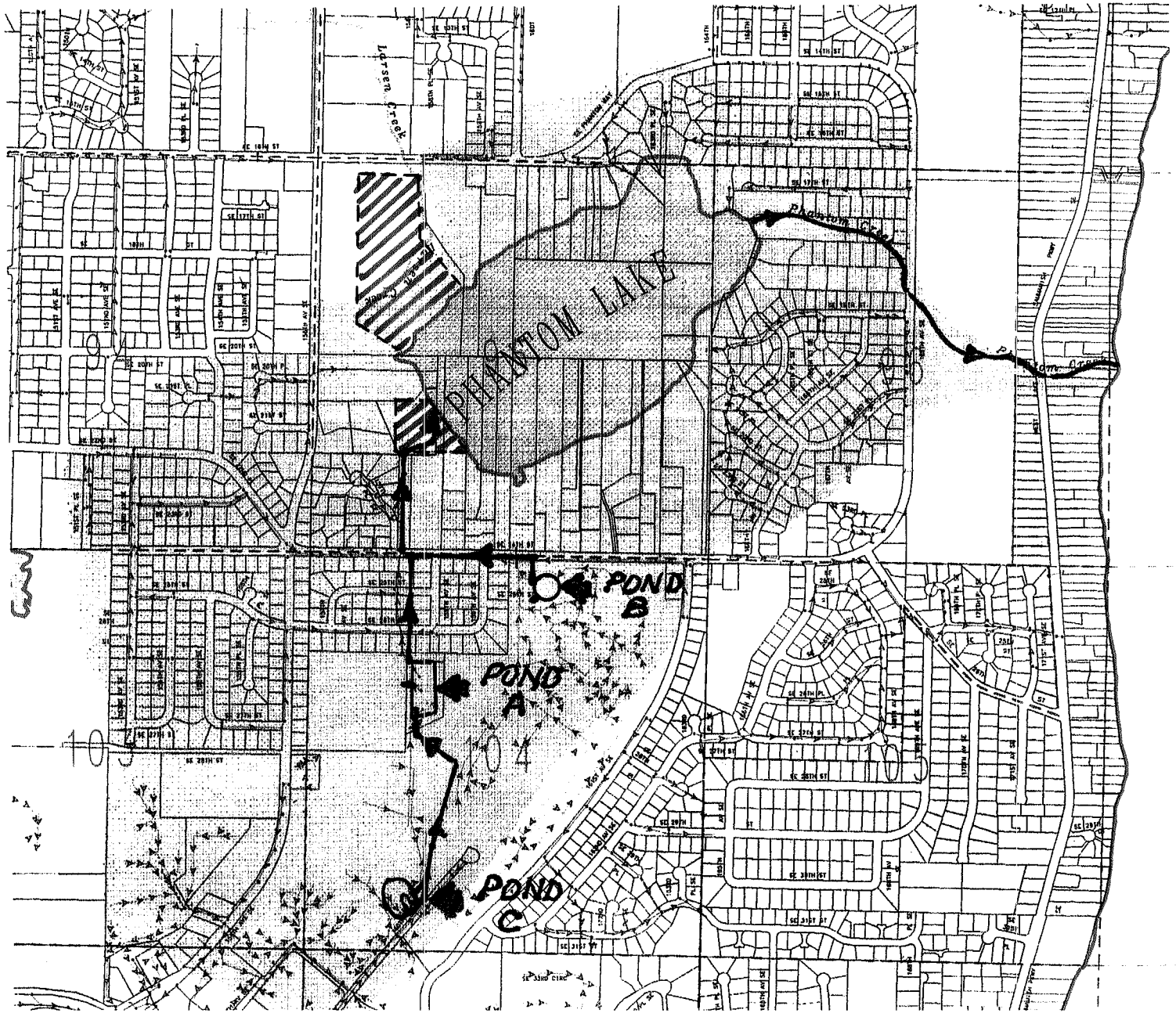
It is paramount that the proposed 27 acre park above the landfill be constructed to control maximum surface water run-off at its source before it enters Pond A and down stream to Phantom Lake. Strategically located storage moats should be implemented at the site to provide this function.

William Rahr

William Rahr

Copies to City Council, Environmental Services Commission

PHANTOM CREEK DRAINAGE BASIN



EXISTING STORAGE PONDS

DRAINAGE FLOW

ADDIONAL STORAGE (FUTURE)

0 500 1000

CITY OF BELLEVUE WASHINGTON

GIS DESIGN

INFORMATION SERVICES

and

STORM & SURFACE

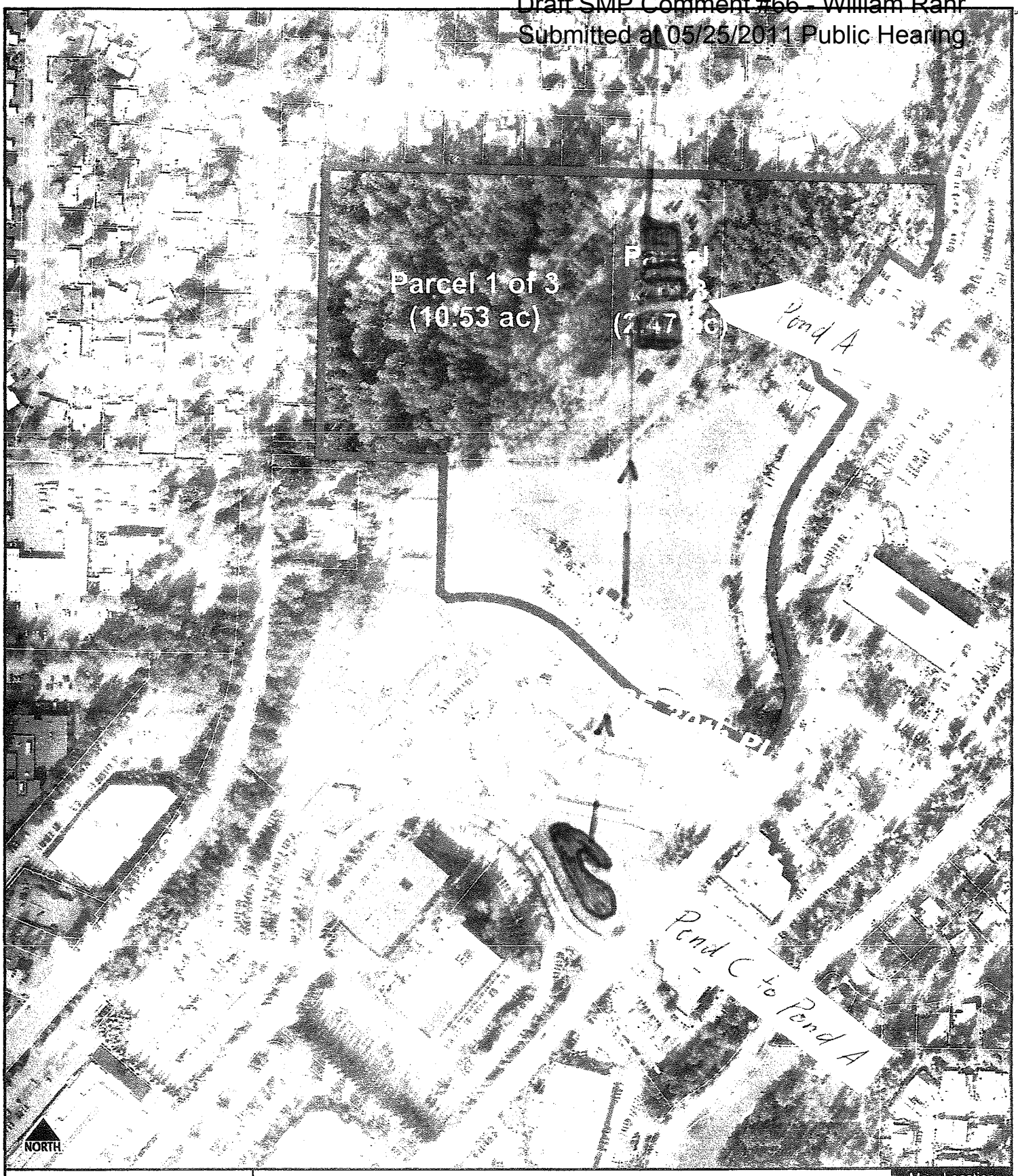
WATER UTILITY

DISCLAIMER

This map was compiled from data maintained by the City of Bellevue's Geographic Information Systems and Storm and Surface Water Utility. It is the best information available as of the date shown. This map is intended for general guidance only and is not guaranteed to be survey accurate. The Utility is not liable for damages caused by errors or omissions in this map or improper use of it. This material is owned and copyrighted by the Utility. All rights

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing



V:\pk\avproj\pam\Boeing_VicinityParcel_8x11.mxt

= 300 feet

City of Bellevue
Park Department
Planning

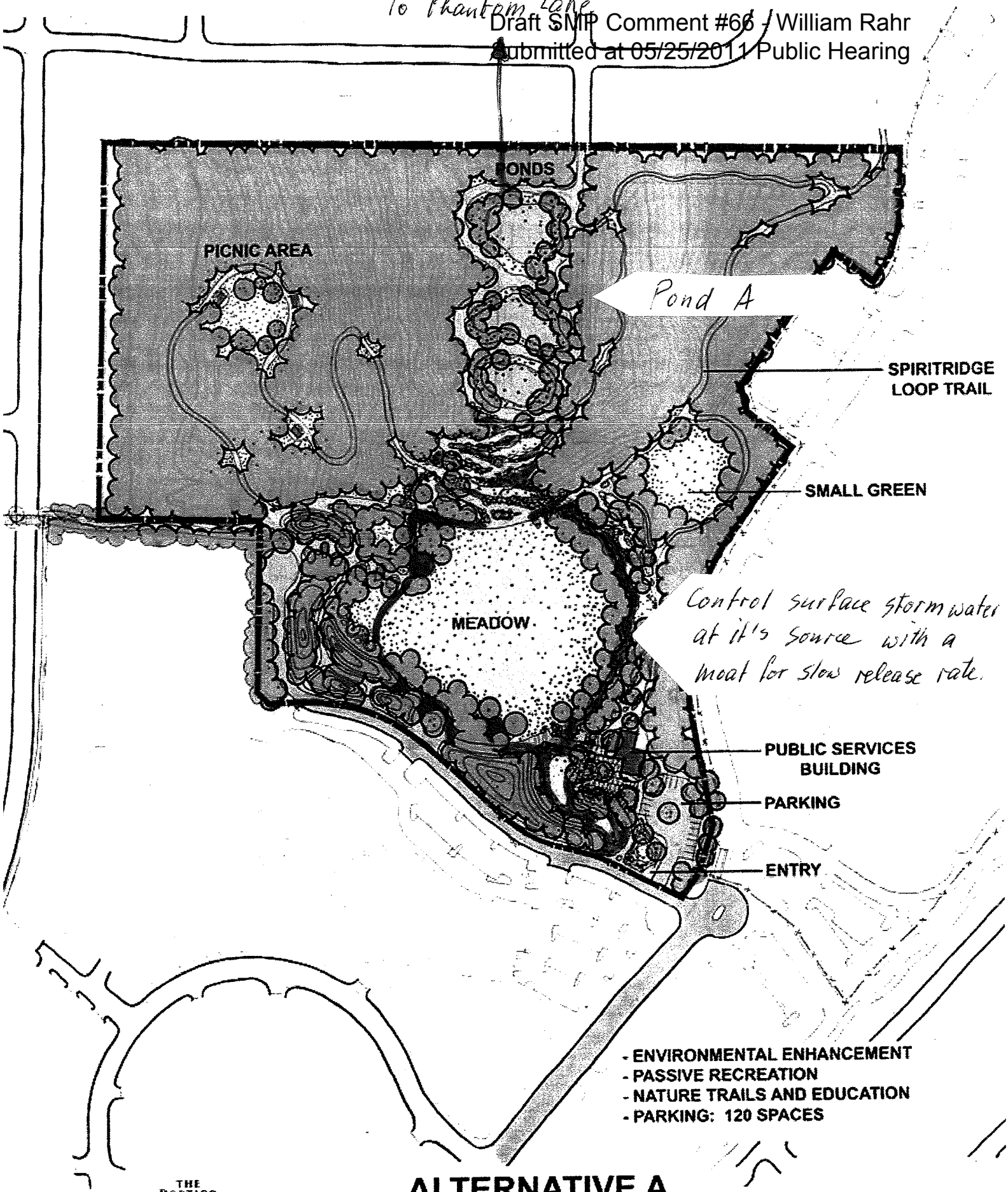
Plot Date: 12/2008

Vicinity map
Eastgate Area Properties
Community Park (27.5 ac)
2997 160th Ave SE

Map Location

To Phantom Lake

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing



THE PORTICO GROUP

City of Bellevue

ALTERNATIVE A

WOODLAND MEADOW PARK

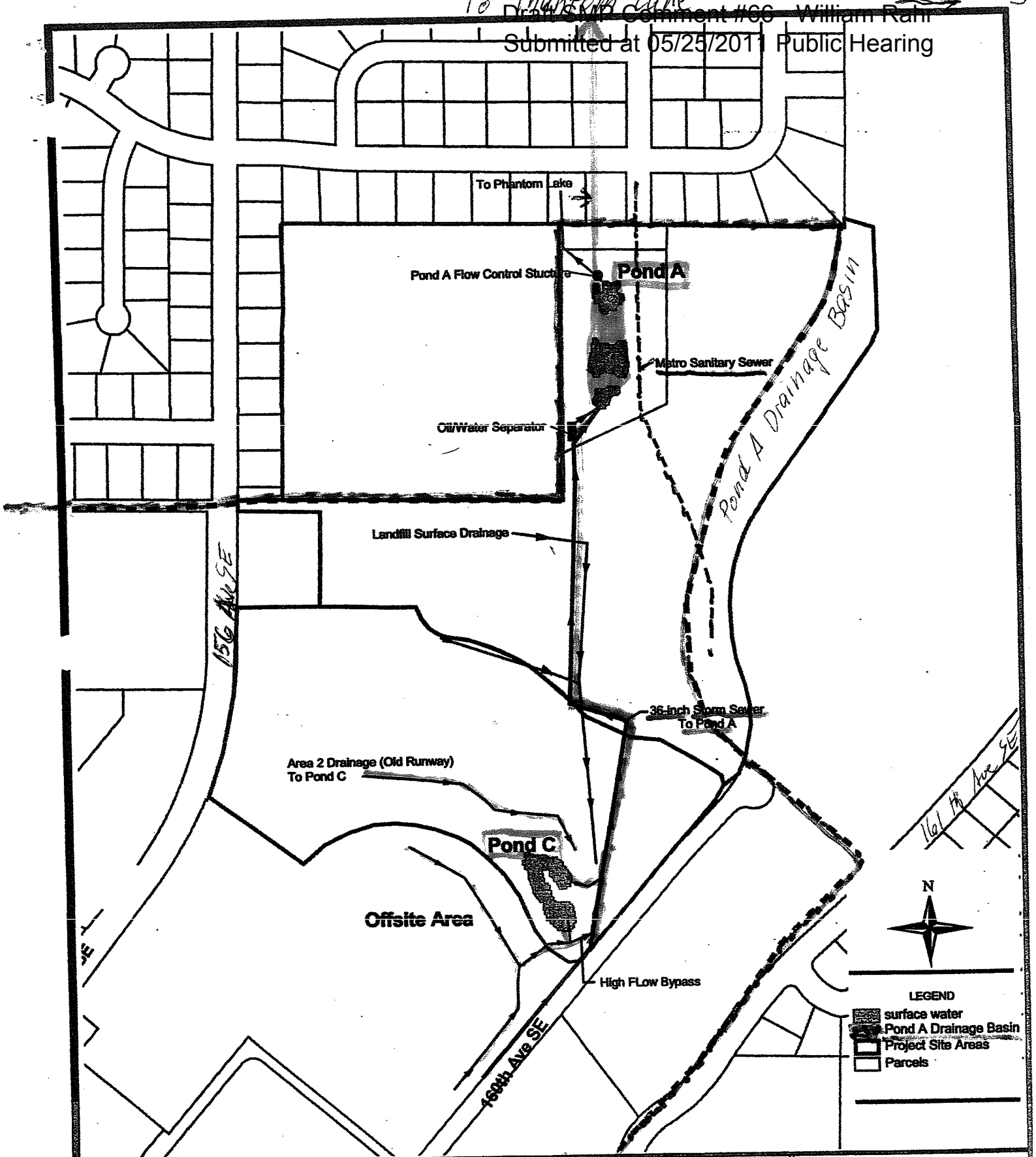
MASTER PLAN FOR

EASTGATE AREA PROPERTIES

To Phantom Lake

to Pond B

Draft SMP Comment #66 William Rahr
Submitted at 05/25/2011 Public Hearing



BELLEVUE AIRPORT FEASIBILITY STUDY

Figure 3
Existing Stormwater System

Storm water Management prepared by CH2M Hill

1986

Relationship between the till underneath solid waste and till at MW5 is not fully understood, pg (5-4)

KCM Report of Phant. Larsen LK Study

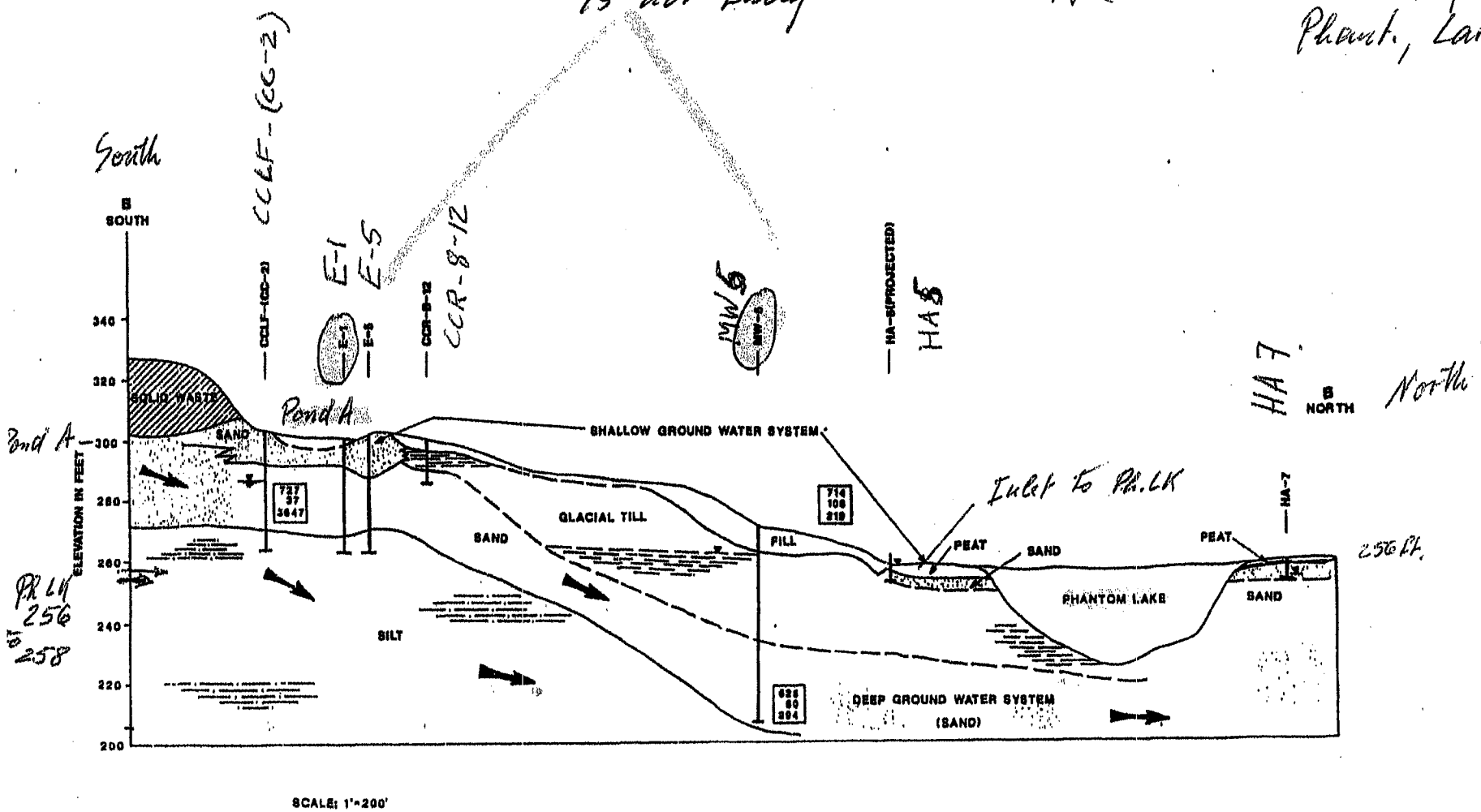
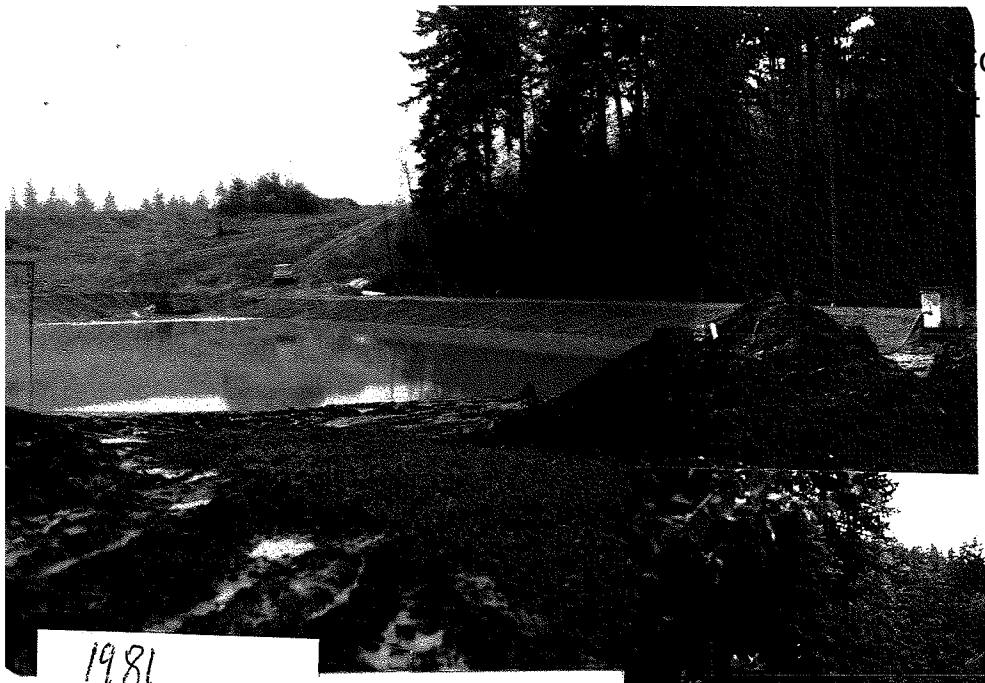


Figure 5-3 Cross-section of area B'-B' from Figure 5-1

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

Page 4

from 1981 to 1987



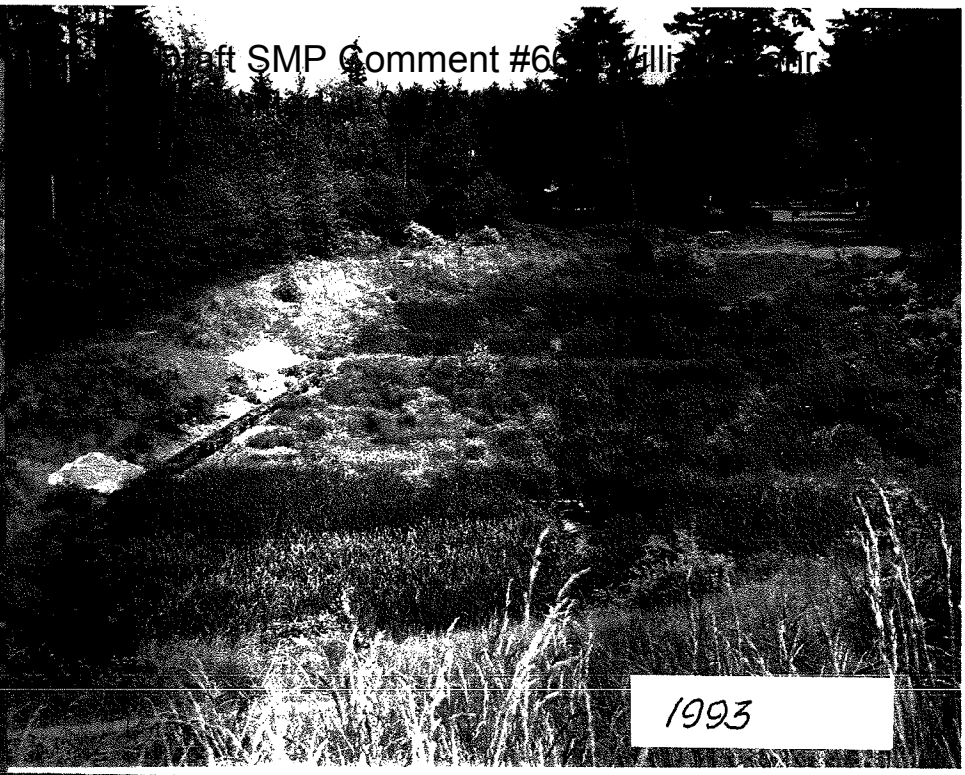
1981

1982

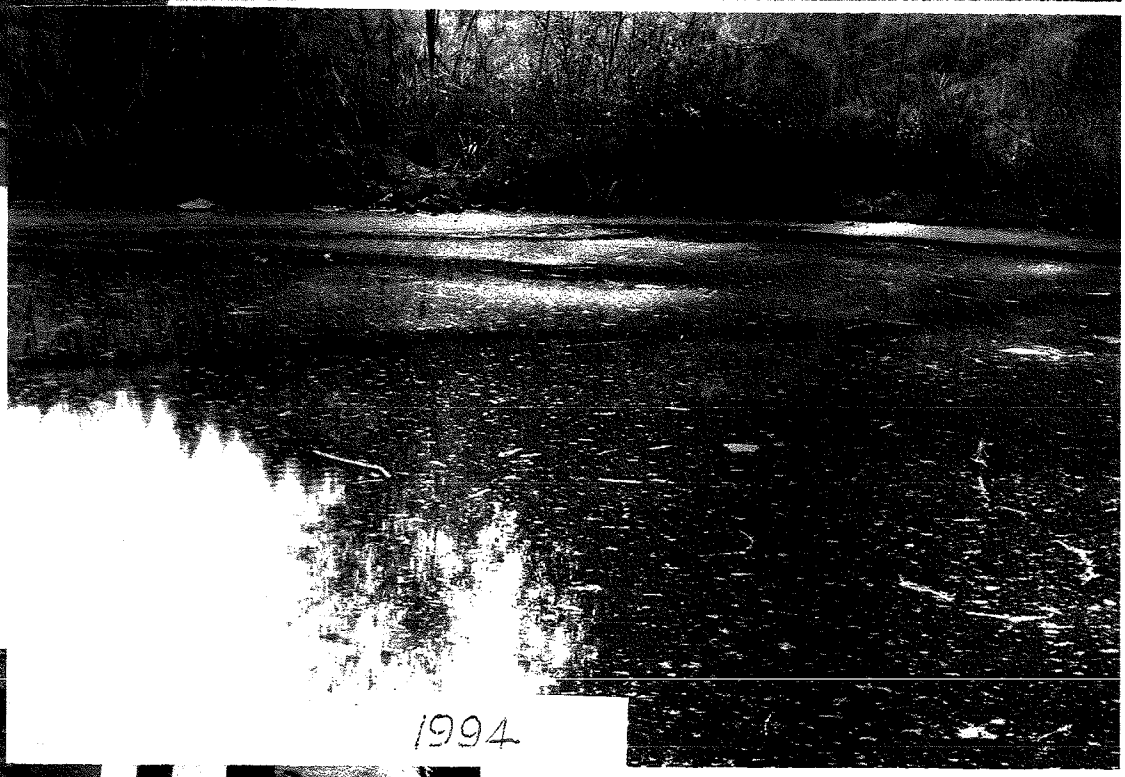
1985

1987

1985



1993



1994

POND A

1985 - BUILD UP OF SEDIMENT

1993 - OVER GROWN W. Typha (CATTAILS)

1990

1990 - SCUM FROM LANDFILL

1994 - BLUE-GREEN ALGAE

Pond A in [illegible]

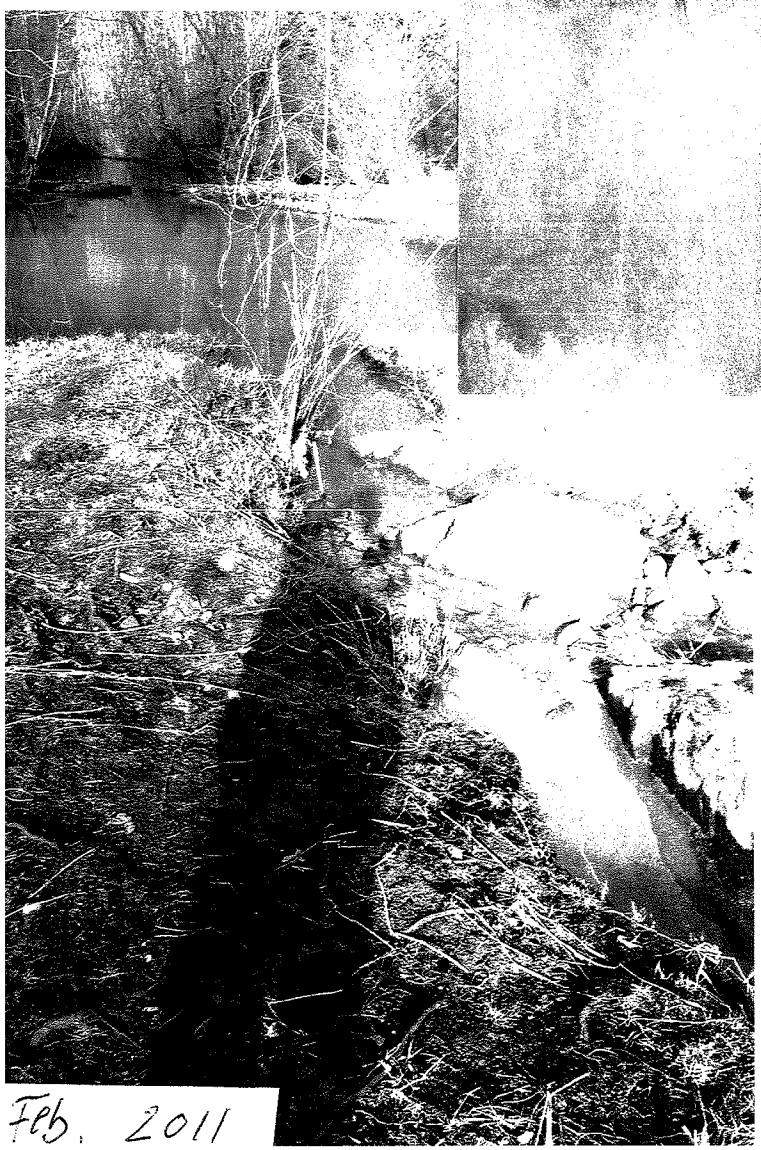
#66 - William Rahr
011 Public Hearing

POND A

DEC 2006 SILT DEPOST FROM CONSTRUCTION ACTIVITIES

Dec. 2006

2011



Feb. 2011

2011 LANDFILL SEEPAGE INTO POND A

City of Bellevue
Utilities Department
Resource Management Division
PO Box 90012
Bellevue, WA 98009-9012

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

PHANTOM LAKE STUDY

Stormwater Detention Analysis for Boeing Computer Services Headquarters Site

Prepared for

BOEING COMPUTER SERVICES

and the

CITY OF BELLEVUE

CH2M HILL

OCTOBER 1993

within the City of Bellevue, the results of the detention analysis using the Ecology guidelines provides a comparison to the current City of Bellevue standards only.

- The Ecology standards are intended to control streambank erosion due to increased runoff from new developments. These standards require the control of the developed 2-year, 24-hour runoff rate to one-half the predeveloped rate. Runoff for the 10- and 100-year, 24-hour events is controlled to the predeveloped rates.

In addition to the above standards, Ecology recommends a volume correction factor based on impervious area. The impervious cover for Basins A and B averages about 71 percent which yields a volume correction factor of 41 percent. This correction factor is applied to the volume of storage at each stage of depth; hence, the surface area must be increased to provide the additional volume.

The RDFAC program was used to size detention for the future condition runoff rates from tributary Basins A and B. The required detention volume using Ecology standards is less than the Bellevue standards for Pond B but greater for Pond A.

Under future conditions for the 100-year 24-hour design storm event, the Ecology standards applied to Pond A require 31 percent more storage volume required by the current City of Bellevue standards.

The peak storage volume for Pond B under Ecology guidelines for the 100-year, 24-hour design storm event is 13 percent less than the volume required by current City of Bellevue standards. To meet Ecology standards, the volume of Pond B would need to be increased by 84 percent over the currently available detention volume.

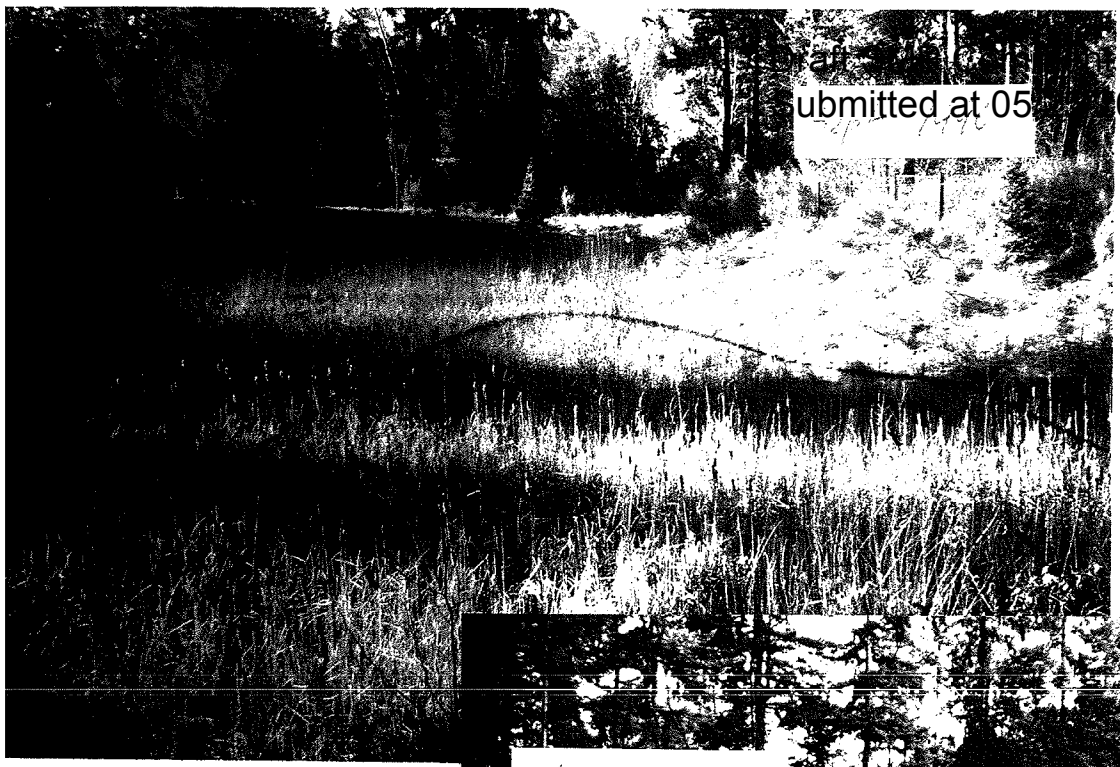
Figures F-5 and F-6 in Appendix F present the RDFAC program results for detention sizing under the Ecology standards for Ponds A and B. Table 14 compares the storage and discharge information for the current pond design and Ecology requirements.

Table 14
Ponds A and B Existing Versus Ecology Standards
Storage and Discharge Summary
for Future Conditions

24-Hour Storm Event	Pond A				Pond B			
	Existing Pond		Ecology Std.		Existing Pond		Ecology Std.	
	Peak Discharge (cfs)	Vol. (cu ft)	Peak Discharge (cfs)	Vol. (cu ft)	Peak Discharge (cfs)	Vol. (cu ft)	Peak Discharge (cfs)	Vol. (cu ft)
2-Year	8.3	131,400	7.3	199,300	3.1	114,900	0.32	315,300
10-Year	12.7	203,100	24.3	242,600	4.9	128,400	2.6	331,200
100-Year	35.9	287,300	44.5	317,700	14.0	181,500	9.7	334,400

#66 - William Rahr
Submitted at 05/[illegible]/2011 Public Hearing

POND B



SEPT 1990
VEGETATED
POND - NOT
HARVESTED

POND B

NOV 1994
OVER GROWN
WITH WILLOWS

DEC 2007
PLANTS LEFT TO
ROT - NUTRIENT
SOURCE TO LAKE

MINUTES OF MEETING
Boeing Computer Services / Phantom Lake Home Owners Association
October 10, 1990

This meeting was held at the invitation of Boeing Computer Services for the purpose of a presentation by Professor Richard Horner of his study of the wet pond to be constructed as a part of the 33-09/10/12 development at the Boeing site.

ATTENDEES:	Professor Richard Horner
Phantom Lake Home Owners Association:	Merwyn Haneberg Elfie Rahr Norman Baulinger
Boeing Computer Services:	Del Rowan Stuart Holdridge Nate Simmons Joe Goodstein
City of Bellevue:	Brian Morgenroth
Richard Carothers Associates: (Designers of the wet pond)	Francis Wall Larry McAndrews
Perkins Coie (Attorney for Boeing Computer Services)	Ellen Conedera Dial

Del Rowan welcomed Professor Horner and area residents to the meeting, and described the meeting as a part of an ongoing process of open communication between Boeing Computer Services and the Phantom Lake community regarding issues of mutual concern. He then introduced Professor Horner.

Professor Horner stated that he had agreed to evaluate the wet pond on the condition that both Boeing and the community be informed simultaneously of his findings. Neither side had sought any information from him prior to presentation of his formal report. Professor Horner began by describing the two questions on which he focused. He stated that total phosphorus (TP) is a good indicator for the effectiveness of water quality control techniques. In general, he said, a well designed and operated wet pond is superior to a biofiltration swale in reducing TP. There are several

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

mechanisms at work. In a wet pond, the water has a relatively long period of residency and exposure to light. Nutrients have an opportunity to settle out and fall to the bottom, and the interaction of particles create precipitation reactions. Water flows through a swale, on the other hand, in a matter of minutes. Moreover, the metals, solids, and nutrients taken out by biofilters in a swale are released in the wintertime, when the vegetation is reduced. It is Professor Horner's opinion that where nutrients are concerned, a wet pond is a better solution.

Ms. Rahr pointed out that colloids such as clay are not removed in a wet pond. Professor Horner said it is very hard to remove clays and there are no clear solutions to this problem. The best solution is prevention at the source. By proper timing of construction, covering exposed slopes, use of straw blankets and wood fiber mulches, presence of clays in run-off can be reduced. Once in suspension, he stated, it is virtually impossible with known techniques to remove clay. Once construction is complete, however, a wet pond is the better method for water quality control.

Professor Horner then described his approach to evaluating the design of Boeing's wet pond. He described the three factors which he used for evaluating that design and which are described in his written report. With respect to the ratio of pond length to width, he recommended reshaping the pond to bring that ratio up to a factor of at least three. The proportion of the total watershed that is covered by the pond surface is constrained by the size and location of the project. According to his calculations, however, the pond would consume 1.1 percent of the total watershed.

With respect to the third characteristic, that is the ratio of pond volume to mean storm volume, Professor Horner pointed out that pond volume should be increased by increasing depth only to a certain point, beyond which depth becomes a liability. He recommended that the ratio in this pond be increased to three, with an average mean depth of six feet. Professor Horner pointed out that the cell structure of the pond is a very positive feature.

Following Professor Horner's presentation there was a discussion of the difference between a water quality control pond, such as this wet pond, and a water detention or retention facility, such as Pond A. It was pointed out that Pond A is the subject of a separate study by the City.

Ms. Rahr then inquired regarding the maintenance criteria for the wet pond. Mr. McAndrews of Richard Carothers Associates described in general the maintenance procedures. Professor Horner stated that the criterion for maintenance should be to maintain the capacity of the pond. Maintenance alternatives, including draining in the summer to reduce mosquitoes, were discussed. In response to a question from Ms. Rahr, Professor Horner stated that he was not concerned that the

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

temperature of the water in the pond would be too high, although it would be beneficial to have trees nearby. He pointed out that this pond will have a long dead storage period.

In response to a question from Mr. Baulinger, there was some discussion of the rate at which water flows through the pond and the size of a storm which would cause the water to bypass the pond altogether. It was pointed out that the pond is designed for five cubic feet per second rate at the inlet, which translates to approximately 37.5 gallons per second. There was further discussion of the relationship between Pond A and Phantom Lake, and the role this pond would play in water quality. Professor Horner stated that the best use of everyone's energies would be to focus on the problems with Pond A. Del Rowan restated Boeing's position that it will participate in any upgrade of Pond A recommended as a result of the City's study.

Ms. Rahr pointed out that alternative approaches to designing projects should be considered. She gave as an example approaches to reduce the total amount of surface devoted to parking lots.

There was discussion of the advantages of a "serrated" bottom for the pond, similar in concept to benching or graduated levels but which could result in numerous cells. Professor Horner stated that in general, the proper use of that technique should improve the performance of a pond, but that it could have disadvantages as well. Mr. Baulinger suggested that Boeing consider use of a serrated bottom to the pond and also select the species of plantings in the pond to maximize the uptake of nutrients. Mr. Holdridge of Boeing agreed to consider those alternatives. Professor Horner stated that many techniques can be used to optimize the pond, but should not be used at the cost of volume.

Ms. Rahr stated that she would like to see a shutoff mechanism to prevent overflow of water from the pond into Phantom Lake. Mr. Holdridge stated that Boeing would look at it together with the City, in connection with the Pond A study.

There was some discussion of the cost of construction of the wet pond as compared to the total cost for the project. There was also discussion of ongoing means of communication between Boeing and the community, which is welcomed by Boeing. Mr. Baulinger pointed out that Ms. Rahr has substantial expertise to offer which would be of value in the design process.

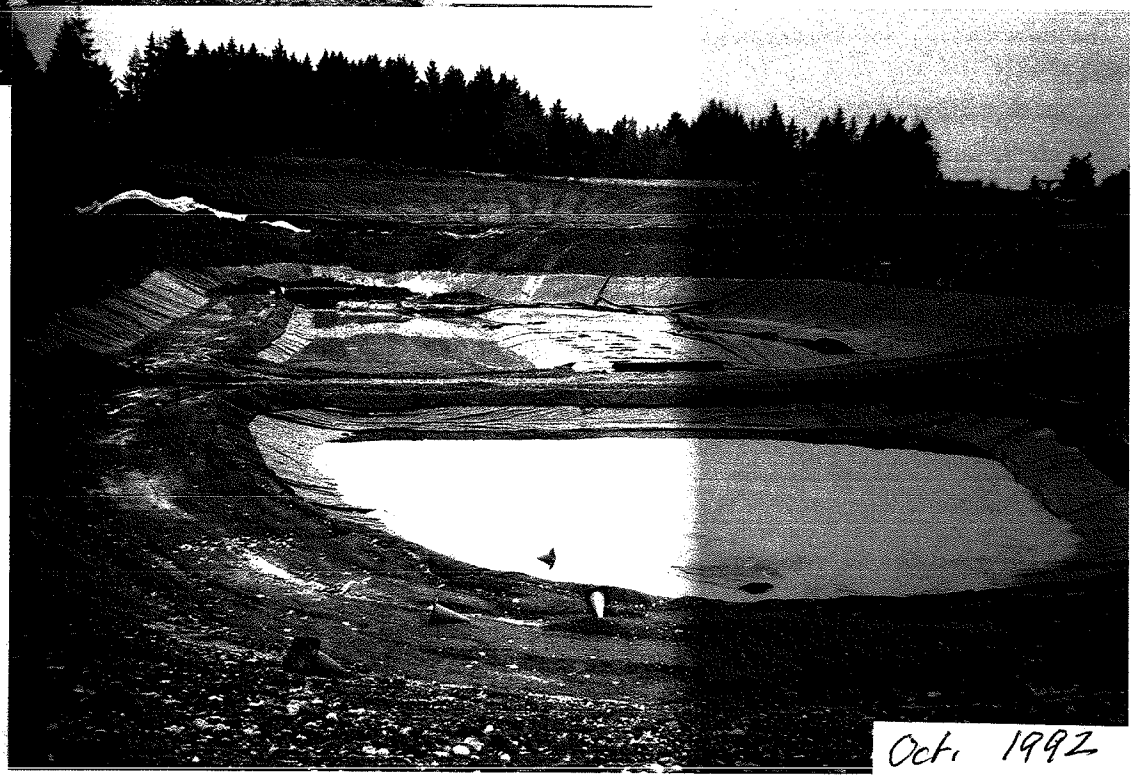
Mr. Rowan concluded the meeting with a statement that Boeing intends to continue the process of communication with area residents.

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

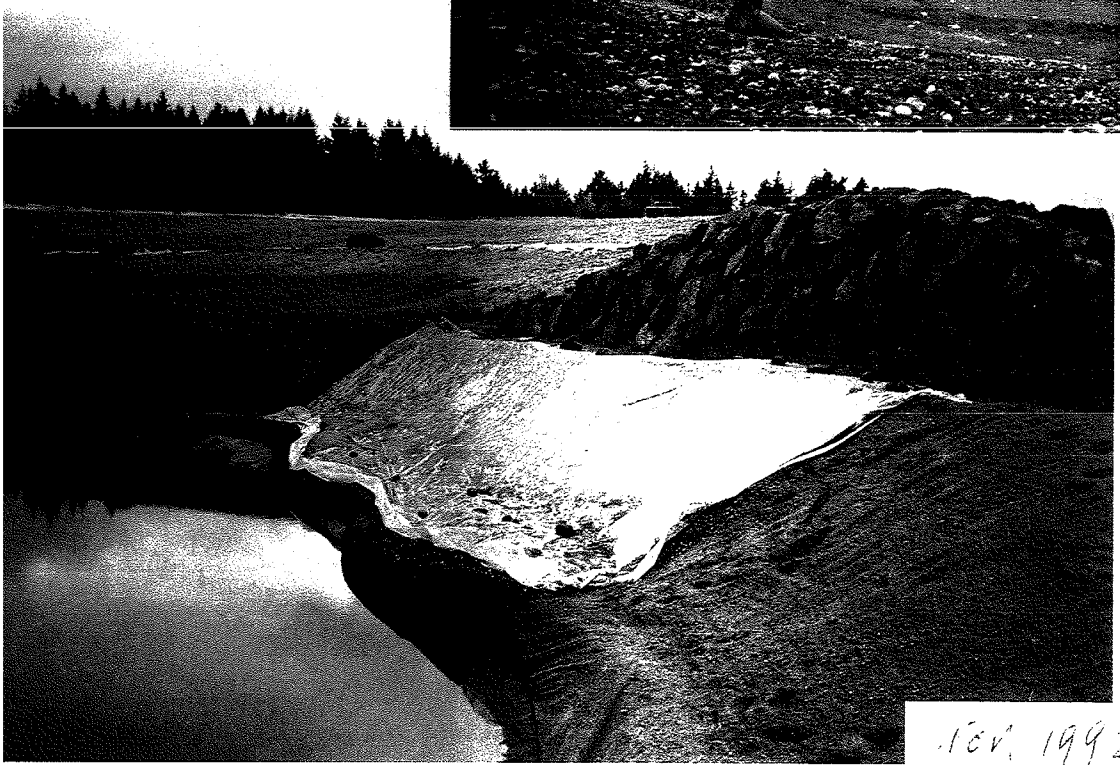
Pond C

Construction of Pond C (plastic lined)

Sept. 1992



Oct. 1992



Nov. 1992

Submitted at 05/25/2011 Public Hearing

Is an Invasion of Our Lakes Imminent?

Scott Williams, Executive Director
Maine Volunteer Lake Monitoring Program

Maine is one of the few States whose lakes have not experienced significant problems resulting from "exotic" or invasive aquatic plants. We have been more fortunate than our New England neighbors. Numerous lakes in New Hampshire, Massachusetts, Vermont and Connecticut have become choked with invasive plants that can interfere with boating and swimming and alter fishery habitat. Most of these plants are exotic or "foreign". Exotic may imply that a plant or animal is not native to a region or a country. It can also be used in a more narrow sense to describe an organism that has not occurred historically in a state, or even within an individual lake. For example, some plants that are native to North America may never have occurred in a particular lake. When newly introduced to a lake, many plants have the potential to become a disruptive nuisance.

Rooted aquatic plants like cattails, water lilies, and rushes are collectively referred to as *macrophytes*. They normally grow in diverse, balanced communities with other plant and animal residents of our lakes. Their habitat preference is shallow, sheltered areas with soft, nutrient-rich organic bottom sediments. The location and growth of lake plants is limited by these requirements. Their growth is also limited by competition with other species, by insects, fish and mammals that forage these plants, and by disease. Lake plant populations also vary from one year to the next due to fluctuations in water levels, ice depth, and natural community successions.

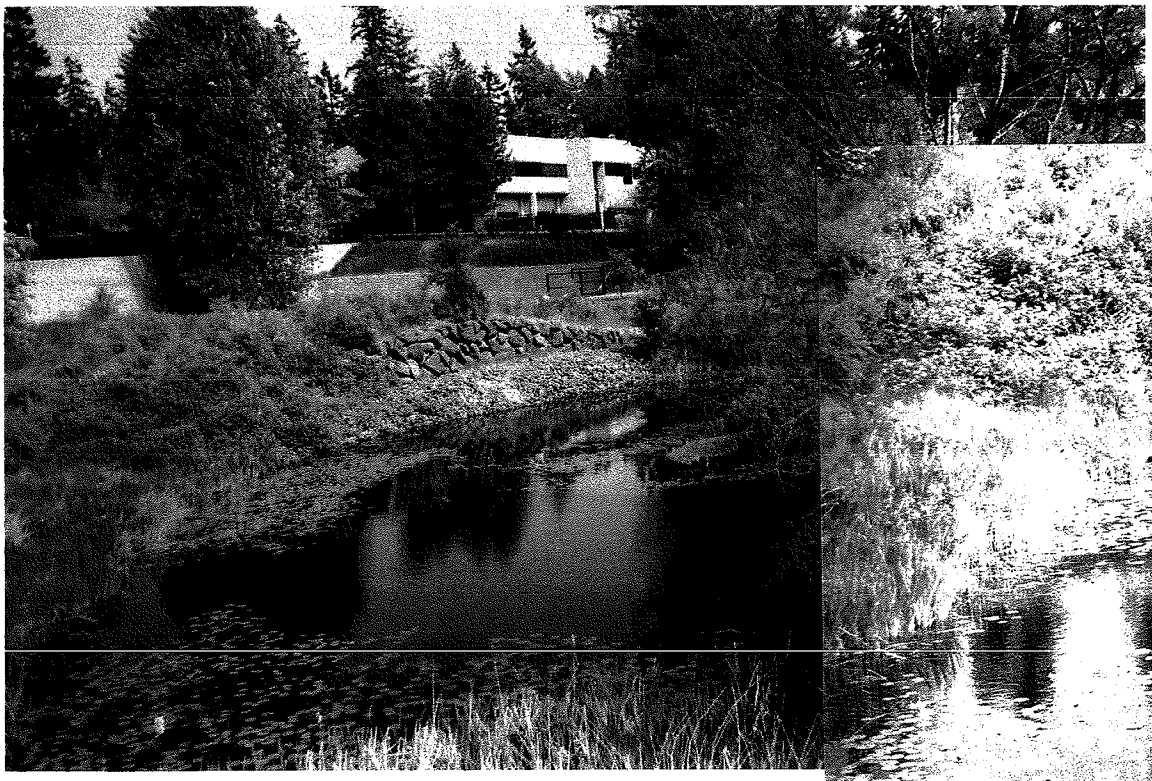
Native aquatic plants play a number of important roles in lake ecology. However, their presence may, at times conflict with the ways in which we use our lakes. For example, dense stands of Pickerel Weed may interfere with swimming and boating, but fishermen recognize the excellent habitat that these plants provide for some species of fish. An increase in the number of naturally occurring plants in an individual lake may be caused by elevated nutrient levels in the lake and accumulations of sediment in shallow areas, both of which may be the result of watershed development. . The overall benefits of rooted lake plants to water quality and to all lake users far outweigh the occasional inconveniences they cause to swimmers and boaters.

- An increase in the rate of organic enrichment of the lake (eutrophication), resulting from rapid, uncontrolled growth of the invasive plants. Nutrients can be rapidly cycled from the bottom sediments to the plant, and into the water when the plant dies. Those nutrients may then become available to algae or other rooted lake plants.
- Swimming and boating may be seriously impaired due to heavy plant growth along the shoreline
- Reduced aesthetic appeal
- It is likely that a relationship exists between the excess growth of exotic rooted plants and shorefront property values, similar to the relationship that has been documented between lake transparency and shorefront property values

Extensive research has been conducted on the subject of controlling invasive plants. *Much of this research suggests that the most effective (economic and practical) approach to this problem is through prevention or early detection.* If lake users are well-informed about the ways in which plants spread, infestations may be prevented. If one does occur, early detection can reduce the chances that the plant will spread throughout the lake.

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

5-18-08
Pond C



Proliferation
of water lilies
due to sediment
built up in pond

Norm

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

September 20, 1990

City of Bellevue
Office of Hearing Examiner
P. O. Box 90012
Bellevue, Wa 98009-9012

Re: Appeal of Phantom Lake Homeowners Association from decision to grant Administrative Design Review Approval and SEPA Threshold Determination to Boeing Computer Services (DRMAJ-90-3650).

The Phantom Lake Homeowners Association herewith withdraws the appeal filed September 4, 1990 with the Office of the Hearing Examiner regarding storm and surface drainage into Phantom Lake.

This is done with the understanding that the Boeing Company will cooperate with the City and residents around Phantom Lake to further enhance plans and constructions to improve storm run-off both in quality and detention on not only this, but future projects, utilizing engineering studies presently underway, as well as City of Bellevue requirements, guidelines and Special Conditions for Phantom/Larsen Lakes Drainage Basin, State of Washington Water Quality Standards and Federal EPA Standards.

We are of the very strong opinion that the proposed new development along with the existing office park detention system, as presently engineered and maintained, does not meet the above named standards, and we have the understanding that the Boeing Company is willing to contribute significantly to improve their plans, upgrade, and help maintain the existing pond systems. The attached letter dated September 19, 1990, will serve as an understanding between the Boeing Company and the Phantom Lake Homeowners Association, and becomes a part of this record.

We remove this appeal to allow the Boeing Company to proceed with initial earthwork within the seasonal window allowed by City Regulations with the mutual understanding that they will cooperate with us in these matters, and appreciate their desire to make constructions right. We go on record, however, with the understanding that future development will be scrutinized even more closely as we moniter the storm water during coming months from these facilities.

Merwyn Hameberg

Merwyn Hameberg, President, Phantom Lake Homeowners Association
16114 S.E. 24th Street
Bellevue Wa 98008

cc: Del Rowan, Boeing Computer Center
Ken Theim, Design and Development
Bellevue Storm and Surface Water Utility
Bellevue Parks Department
Sammamish Community Council

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

City of Bellevue
Sammamish Community Council 455-6805 • FAX 451-7258
Post Office Box 90012 • Bellevue, Washington • 98009-9012

Date: November 9, 1992

To: Mayor Bozeman and Councilmembers

From: Laura Carroll, Vice Chair LC

RE: Construction Run-off into Phantom Lake

Last week the construction of a new detention pond was evidently completed by Boeing in the I-90 Business Park, approximately three weeks after its scheduled completion. When we questioned Storm and Surface Water Utility staff in September about the timing of this project, so close to the traditional rainy season, we were assured that "a detailed erosion and sediment control plan is being followed during construction to avoid sedimentation downstream." Unfortunately, this plan did not effectively contain sediment on the site, as there was a significant amount of run-off this weekend into nearby Pond A, continuing into the Phantom Lake inlet, and eventually into Phantom Lake.

While we understand that this project, which will involve a landscaping component, was delayed because of the citywide water restrictions last summer, it is regrettable that construction did proceed this fall with an inadequate plan for the protection of the adjacent pond, inlet, and lake. We bring this to your attention with the hope that the construction site will be secured against any further release of sediment into these highly sensitive areas.

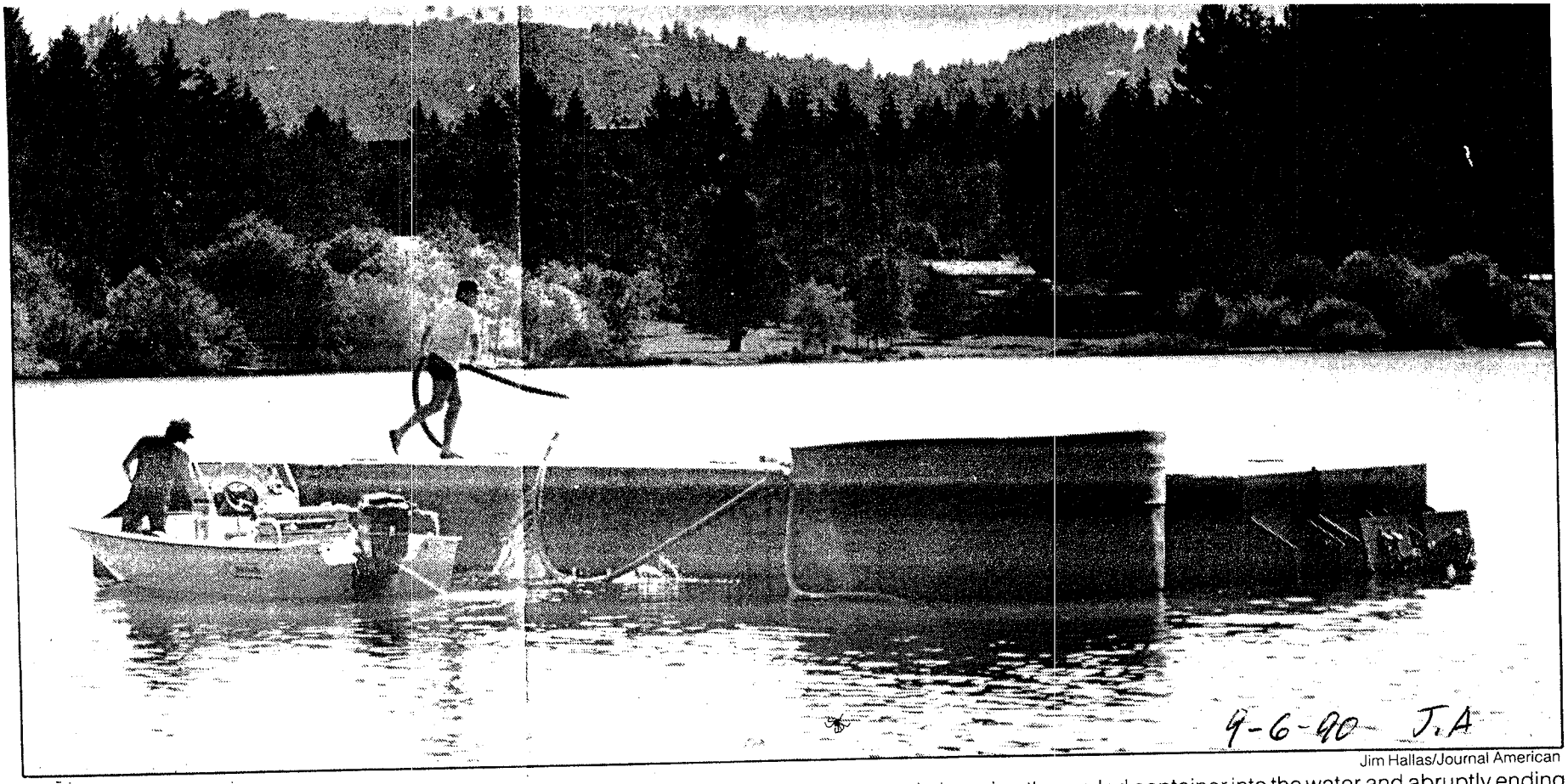
The deteriorating water quality of Phantom Lake, which feeds Lake Sammamish, has been an ongoing concern of Bellevue residents and government, and we believe it should continue to receive attention as an environmental problem with regional implications.

LC/sm

cc: Phillip Kushlan, City Manager
Members of the Environmental Services Commission
Damon Diessner, Storm and Surface Water Utility director

att: Rick Watson memo, 5 October 1992

Date SMP Comment #86 - William Rahr
Submitted on 05/25/2011 Public Hearing



Jim Hallas/Journal American

A workman tries to unsnarl a feeder line to a 3,500-gallon tank of alum, resting upside down in shallow water at Phantom Lake. A 40-foot barge overturned, dropping the sealed container into the water and abruptly ending efforts to treat the lake's high phosphorus level. No one was injured.

Chemical cure 'barges' into lake

Giant tank topples into Phantom waters

By Elizabethe Brown
Journal American Staff Writer

BELLEVUE – Phantom Lake will have to wait a little longer for an antidote to its phosphorus problem.

On Wednesday — while a television news crew and other media looked on — a steel barge loaded with aluminum sulfate capsized before workers even started pumping the chemical into the water.

Luckily, the two men aboard the barge leaped to safety before it overturned around 3 p.m. and no alum escaped from the huge sealed, 3,500-gallon tank dumped from the barge deck.

"We're still alive," said one employee of Imco Inc., a Bellingham-based construction company that was preparing to squirt alum into the lake. The employee quickly added that he was under orders from his boss to refrain from talking with reporters.

Why the heavy steel barge overturned is still a mystery, said Damon Diessner, director of Bellevue's Storm and Surface Water Utility.

"I'm not a barge expert," he said. "I think I'll leave that up to the boat people. I make water go downhill for a living."

But Joseph Giacobazzi, an engineering contractor working for the city, said it appeared the big alum tank set the barge off balance.

"It just seems that probably the center of gravity was a little high," he said.

The barge toppling was filmed by a television news crew that had been invited to the alum treatment.

"We put out a press release," Diessner said. "We were hoping we'd get coverage."

The alum treatment is part of a project to clean up Phantom and Larsen lakes, which suffer from too much phosphorus in their waters. Phosphorus — commonly found in lawn fertilizers — contributes to stinky algae blooms in the south Bellevue lakes.

Giacobazzi said a crane would be used this morning to turn the barge over. The alum will be pumped into smaller, more manageable tanks. The treatment operation will resume on Friday or Monday.

Draft SMP Comment #66 - William Rahr
Submitted at 05/25/2011 Public Hearing

Viewpoints

Journal-American editorial page

Bellevue should be firm with developer

THE STRUGGLE over provisions for drainage in an industrial park on the site of the Bellevue Airfield can best be settled if Bellevue city officials prevail.

The city wants the developer, Cabot, Cabot & Forbes, to meet three provisions: Install a mechanical oil separator in a detention pond, develop a plan to handle seepage from an old county dump on the property, and replace rather than repair some cracked sewer pipe near the dump.

The developer has objections to each demand and has offered alternatives, but the dispute has reached the point where little can be gained from further negotiation. The city must require that the developer take appropriate steps to protect the environment. If it abandons its position now, it will leave its ability to oversee major developments open to question.

The city and Cabot, Cabot & Forbes agreed on the work to be done. The developer, instead of carrying out its end of the agreement, has done what it wanted, and is trying to convince the city it is sufficient. It's time for the city to insist on the earlier agreement and begin dipping into the performance bond filed by the developer.

CC&F claims that the less-expensive, natural filtration system it proposed would work better. It also argues that the repaired pipe is adequate. But in both cases the city will be responsible for maintenance, so its standards ought to prevail.

With the garbage dump, CC&F says its tests show the seeping water to be near drinking quality. The city says the tests didn't check for the chemicals it is most concerned about. Besides that, CC&F has not filed the required plan.

The business park developing on the site will bring much economic benefit to Bellevue. CC&F has been, by and large, concerned about minimizing development costs. Some of its points in the present dispute may be arguable, but the city can't allow a developer to usurp its task of determining whether steps to protect the environment are adequate.

The city should hold its ground, and Cabot, Cabot & Forbes should comply.

Bill Rahr	lived on Phantom Lake since the late 1950s. He voiced his support for the comments made by the Washington Sensible Shorelines Association representatives, and noted that there are many good points included in the draft Shoreline Master Program. He particularly agreed with the notion of treating Phantom Lake differently from either Lake Washington or Lake Sammamish. He provided the Commission with a packet of information that included a letter with comments made on behalf of the Phantom Lake Homeowners Association. The packet included photographs and documents pertinent to the issues facing Phantom Lake.	**45.3** **45.4** **45.5**

Katherine Murray	property was impacted by the work to update the critical area regulations, resulting in the loss of 25 percent of the property which can no longer be used for anything but must be maintained with native vegetation. She said if the proposed Shoreline Master Program regulations go into effect, 60 percent of the last remaining flat area of the property will be lost as well, leaving almost no usable property. The requirement to plant tall trees in a grouping would only serve to block views for the neighboring properties. She yielded the balance of her time to Ms. Lori Lyford.	**46.1** **46.2**

Comments reflect PowerPoint

Lori Lyford	highlighted the principle of facilitating stewardship efforts that start with the shoreline property owners by fostering reinvestment that maintains existing shoreline ecological functions through adoption of user-friendly and predicable regulatory framework that is flexible and requires a minimum of technical expertise. She suggested it would be better if revised to say to make easy the management and care of the shoreline by property owners by encouraging them to spend time and money to keep the shoreline healthy with rules that are understandable and helpful and without needing to hire experts to make it work. The work produced by staff for the update is anything but understandable, helpful or encouraging. The proposed Shoreline Master Program is irrational and inconsistent.	**47.1** **47.2**
	Lands that are designated residential make up the largest segment of the Bellevue shoreline, and the residential section of the draft document is 33 pages long and significant knowledge of the Shoreline Master Program is needed in order to understand the concepts. In addition to the difficult cross-references and code layering, there are arbitrary requirements for setbacks, replacement values, and vegetative conservation area. The matrix of mitigation is mindboggling.	**47.3**
	Staff have admitted that the proposed 50-foot setback was selected arbitrarily and without ecological justification. The rule fails to recognize that the Bellevue shoreline is highly developed; it would retroactively make legally established homes nonconforming. Additionally, 60 percent of the first 25 feet of the proposed 50-foot setback must be set aside and planted with native vegetation.	**47.4**
	Homeowners would not choose to construct concrete bulkheads, riprap or other hard stabilization if not required to protect their properties. Properties with lawns that slope gently to the shoreline are highly desired. Depending on the fetch, however, bulkheads and other measures are necessary to hold back the sloped shores of the lakes. It has been stated that the Shoreline Master Program is necessary to improve shoreline habitat for salmon, but salmon do not care if structures are repaired to only 50 percent of their value; salmon do not understand value and never will. Homeowners wanting to embark on a project will need anywhere between six and a dozen reports and permits; it will require expensive consultants from a number of different disciplines to navigate the labyrinth.	**47.5**
	The regulatory solutions proposed in the Shoreline Master Program are subjective, exhausting, and not supported by legitimate peer-reviewed science. Over the course of the update process, the citizens have presented accurate data, case studies, and counterarguments that have all gone unanswered. When the city has been confronted with credible evidence, the line of attack has simply shifted to a new front. Washington Sensible Shorelines Association has maintained a civil approach and a desire to work with the staff to reach reasonable solutions; the opposite behavior has been evidenced by the staff. Staff have admitted they cannot provide an ecological justification for the 50-foot setback or the vegetative conservation area, yet they have persisted in stonewalling the citizen participants, which indicates an unknown agenda. Homeowners are being held hostage by the city	**47.6**

	through regulations that force them to set aside portions of their properties to mitigate the undetermined impacts of personal use and maintenance of their buildings and land. The stated goals can be accomplished through education, cooperation and the reasonable regulations laid out in the Washington Sensible Shorelines Association's sensible plan.	**47.7**
	Recently a property owner reconstructed their dock. The decision was made to do the right thing and mitigate a larger dock by removing a portion of the bulkhead and adding a gravel beach area. The process took more than three years and cost double the original estimate of $125,000. The permits alone cost more than $17,000, not including the hundreds of hours billed by the construction company for securing the necessary permits. The process of updating the Shoreline Master Program should be used to rectify the development nightmare residents must endure in order to live and prosper where they choose.	**47.8**

Submitted to Public Hearing Bellevue SMP May 25th 2011

The proposed residential regulations are irrational and inconsistent with the stated principles and SMP goals……..let's take one of the principles for example

"To facilitate stewardship efforts that start with the shoreline property owners by fostering reinvestment that maintains existing shoreline ecological functions through adoption of a user friendly and predictable regulatory framework that is flexible, and requires a minimum of technical expertise"

Now here is the same principle plain language; "to make easy the management and care for the shoreline by property owners, by encouraging us to spend time and money to keep the shoreline healthy, with rules that we understand and are helpful, and without needing to hire experts to make it work."

We know what the original statement means, but the meaning is lost in the tedious language. Like the work produced by the staff in this update, it is anything but understandable, helpful or encouraging. Now that we understand the principle allow me to show how the proposed SMP is irrational and inconsistent.

Lands that are designated residential make up the largest segment of the Bellevue Shoreline. The regulation section for residential alone is 33 pages and requires significant knowledge of the SMP to understand the concepts. In addition to the difficult cross references and code layering there are the arbitrary requirements of setbacks (50ft), replacement values (50%) or vegetative conservation areas (60%). The matrix of mitigation, things you must do, to be able to do what you want with your own property, is mind boggling. **47.9**

<u>A 50 ft setback is not required by SMP law</u> **47.10**

City of Bellevue staff admits that 50ft was selected arbitrarily and they cannot provide ecological justification. Again failing to recognize that the Bellevue Shoreline is highly urbanized and this rule would retroactively place legally established homes in non-conforming status. Within the 50ft proposed setback you are required to set aside 60% of the first 25ft and plant with native vegetation. This is another whimsical allotment.

<u>Remove 75% of bulkhead – get a 25 ft reduction</u> **47.11**

Would a homeowner put in a concrete bulkhead, rip-rap, or other hard stabilization if wasn't required to protect their property? The answer is not likely. The gentle sloping lawn to a sandy beach is the highly desired shoreline. Depending on the fetch to your shoreline, bulkheads and hard stabilization are the elements necessary to hold back the sloped shores of our lakes.

Routine Maintenance/Repairs are allowed provided they don't exceed arbitrary "50% of replacement value" threshold.

We are told that the reason the SMA and SMPs are necessary, is to improve shoreline habitat for salmon. Salmon don't care if the structure is repaired to 50% of value or to 100% of value. Salmon don't understand "Value", Salmon never will.

Before you get started on your project, you will need anywhere from six to a dozen different reports and permits. This is another labyrinth requiring consultants; be they hydrologists, geologists, biologists, engineers and mitigation experts. **47.12**

The regulatory solutions proposed in the SMP are subjective, exhausting and not supported by legitimate peer reviewed science. Over the course of the update, citizens have presented accurate data, case studies, and counter arguments that have gone unanswered. When the City is confronted with rational evidence, the line of attack merely shifts to a new front. Throughout our engagement with the City, the WSSA has maintained a civil approach and the position that we desire to work with the staff, to reach reasonable solutions. We have heard and witnessed the opposite behavior on the part of staff; the science doesn't matter, staff has admitted they cannot provide ecological justification for setbacks and vegetative conservation areas. Yet they persist in stonewalling the citizen participants, which would indicate an unknown agenda.

Shoreline homeowners are being held hostage by the City of Bellevue. Through regulations that force them to set aside portions of their property to mitigate the undetermined impacts of personal use and maintenance to their buildings and land.

The stated goals can be accomplished through education, co-operation and the reasonable regulations laid out in the WSSA Sensible Plan. **47.13**

Laurie Lyford

9529 Lake Washington Blvd NE

Bellevue, WA 98004

The proposed residential regulations are irrational and inconsistent with the stated principles and SMP goals

Stated Principle

- To facilitate stewardship efforts that start with the shoreline property owners by fostering reinvestment that maintains existing shoreline ecological functions through adoption of a user friendly and predictable regulatory framework that is flexible, and requires a minimum of technical expertise;

Same principle in basic terms

- To make easy the management and care for the shoreline by property owners, by encouraging us to spend money and time to keep the shoreline healthy, with rules that we understand and are helpful, and without needing to hire experts to make it all work.

A 50 ft setback

is not required by SMP law

Remove 75% of bulkhead

get a 25 ft reduction

<u>Routine Maintenance/Repairs</u> are allowed provided they "50% of replacement value" threshold.

Homeowners are the best stewards of the local shoreline.

One Persons walk
Through the Bellevue Shoreline Process
2006—2011
History and Facts

By
Tom Shafer
Bellevue Resident

I can tell you what the Draft Means and how Bellevue's ***New*** Open and Fair Policy for Citizen Participation affects not only all People of Bellevue but The City of Bellevue.

The Shoreline Process is a perfect example of How a Bad Policy becomes Destructive.

The COB did not change the rules for Citizen Participation; they changed how the city uses and interprets them. And when the new interpretations were not challenged or understood, they became the new Norm and City Expectation for future projects. Examples:

1. Shorelines illegally placed under Critical Areas – ***Acceptable.***
2. Restoration plans, based on illegal rulings, having far more plantings than required and not telling the owners – ***No problem.***
3. COB going around the Shoreline Process by having the State Legislature, keep illegal rulings in force – ***Not an Issue***
4. Staff lying to citizens for 4 years. Telling them there would be no major impact to private property. ***Acceptable.***
5. City Council choosing the Planning Commission as the Citizen Advisory Committee – eliminating any real process for People Representation to craft policy or help write Shoreline Revisions - ***Acceptable***
6. **No** Independent Peer Review, which the City uses to verify facts, most recently in the Sound Transit Proposal. ***No Problem.***

You can see how the City built an Internal, City Machine with Unlimited Power, No Accountability, No Citizen Accessibility and No Controls.

a. COB Staff makes changes; COB Planning Commission accepting; and data from Watershed, who has a business relationship with COB.

The COB eliminated the People from the Open Process, built a Closed Ended Process, crafted rules based on illegal practices and created an unfair advantage.

1. And that is textbook, dictionary definition of **FRAUD**.

Our City is systematically Crushing Citizens Rights and Extermination People's Liberties with Expensive Rulings that are highly questionable, Not Required, based on Illegal Practices and without Representation of the People it is supposed to Serve.

The Shoreline Process has become a Broken Promise to The People. No longer is it about People participating and helping craft policy, but about COB working against their Citizens, about Trickery, Deceit, Exclusions and about Extortion where City Takes All.

The Proof of my statements is in The Draft no one can read or understand. But you and I know what it does – It Extinguishes Peoples Rights and Steals Citizen Property.

1. Is Fraud, Lying and Stealing what you want for Your Legacy?

Accepting this Draft creates a Gold Mine. The City is getting everything they could wish for - City unleashes the most restrictive regulations that are not required and go beyond any Federal, State or City guideline; the City finally get to throw Citizens Rights under a moving bus ***And*** City gives The People the other end of the Gold Mine.

1. The City is giving all its Citizens,– ***The Shaft***

If you asked me how to help correct some of the inequities, I would offer you 3 ideas:

1. First, take a look at the WSSA Alternative Plan.
   a. It is clear, readable and addresses the issues in a straightforward, understandable manner. **48.1**
   b. It is an olive branch and lifeline you can actually use and believe in.
   c. Read it; Use it. It can do what the City Draft cannot: it could be accepted by citizens, could be implemented and could stand the test of time.

2. Secondly, do what should have been done from the beginning – Follow the existing instructions for real Citizen Participation in City Projects and Shoreline Updates: **48.2**
   a. Create a meaningful, independent Citizen Advisory Committee with people who have the Knowledge and Expertise to understand the issues and make decisions.
   b. City selects half; the People select half
   c. Let the new CAC hash out a new Draft.

3. Third: Read some papers written by a bunch of Renegades over 200 years ago. They, like many Bellevue residents, were fed up with Lack of Representation, Loss of Rights and Loss of Property. **48.3**
   a. One such miscreant, named James Madison, wrote some articles, actually he wrote 10 Articles, called The Bill of Rights.
      i. They set limits on what government can and cannot do in regard to citizen Freedoms by protecting Citizen's Rights such as Liberty and Property.

   b. I know Mr. Paine has been your coach and guide through the city process, but The Bill of Rights ***trumps*** Staff & City interpretations and is ***THE*** Definitive Instructions for government limits.
   c. Reading The Bill of Rights should send you back to ideas 1 & 2 where there <u>can</u> be meaningful dialogue and solutions that the City and The People <u>can</u> accept.

Let's face it: you do not have to accept this Draft. Oh, some of you want to, but some of you have Ethical and Moral issues with stepping on and rewriting Historical Documents you have no authority to step on or change.

Hopefully some of you will stand up and say so.

Your Decision: it is one of those defining moments in life. It will tell you and others Who You are in your Heart, your Gut and your Head. It is Your Legacy and Our Future.

Choose Wisely! Who you really are is On The Line.

Background information on the Bellevue Shoreline Update Process: From Tom Shafer

Following are the events that occurred in my 4 year search to understand the Shoreline process in Bellevue.

1. Restoration was the process used after the 2005 shoreline updates. It was required if a waterfront homeowner wanted to make changes or improvements to their waterfront. **48.4**

   Did you Know:

   a. City Of Bellevue DID the absolute minimum requirements for notifying people of the restoration policy and only a very few citizens ever knew about it or received the information. The information was minimized and tucked away from easy viewing. If you did not know about it, you would not find it.
   b. The official Blue City of Bellevue notification to adjacent homeowners for permits was brief and the verbiage used was euphemistic and minimized.
      i. Example: "The proposal includes an "X" wide planning plan for the installation of ***Native Vegetation*** along..." **48.5**
   c. Native Vegetation is a benign term and means to most people and is defined in the dictionary as – a community of plants.
   d. The dictionary definition of plants is:" an herb or other small vegetable growth in contrast to a tree or shrub".
   e. To the City of Bellevue, Restoration by Native Vegetation meant trees 150 – 200 feet tall and Shrubs 30 feet tall in homeowner's front, waterfront yards. That was never explained to the Public. **48.6**
   f. To many Insurance Companies, homes that have trees that can fall upon a home will be charged a higher premium due to the risk factor. Even if the trees are on a neighbors property **48.7**

2. The City of Bellevue used Watershed Company to create the official City of Bellevue Handbook CD on Restoration. **48.8**

   Did You Know:

   a. The reference section of the handbook states WSU and King County were the guide and bases for the Native trees, plants and shrubs. **48.9**
   b. The City of Bellevue did not know why 2 trees 150 – 200 feet tall were required or why shrubs that were 30 feet high were necessary. They thought it had to do with coverage. The City did not know where the rulings came from nor could they explain the environmental value.
   c. The City of Bellevue could not explain why the city chose Vine Maple, which has dual nomenclature as a tree or shrub, only as a shrub.
      i. The City of Bellevue did state the specific ruling came from Portland, Oregon and the ruling was Non Negotiable.
      ii. ***Note***: This was the first indication the City of Bellevue was handpicking their rulings, not based on a Bellevue study but, rather, by City choices that City wanted from the WSU, King County or any jurisdiction the city saw fit to use.
   d. Trees have been shown to have value around streams and rivers BUT there is no evidence or study for lakes. The City of Bellevue handpicked the information and applied it to lakes. **48.10**

3. Watershed Company, a company that has a long time working relationship with the City of Bellevue and wrote the official City of Bellevue Restoration Handbook, had their own templates in the handbook. **48.11**

   Did you Know:

a. Watershed stated to those homeowners who were frustrate and overwhelmed at the number of contractors required to meet the City of Bellevue Restoration requirements and the cost: if you use our templates to create the required Restoration Plan, it will take the worries out of meeting the Bellevue requirements, the City of Bellevue will approve it. **48.12**

b. ***Note:*** What Watershed did not tell the customers that employed them and paid then for work was: Bellevue will accept the Restoration Plan because it has far more plantings and coverage than is required **48.13**

c. The City of Bellevue and Watershed approved Restoration planting of shrubs in close proximity of each other. The reasons stated: this is the way they are found in the forest. **48.14**

   i. ***Note:*** Neither The City or Watershed referenced the fact the specific properties in question were located in densely populated, urban, developed areas. Having dense Thickets in an owners front yard made no sense to me and goes against what Staff told the people and me, which was: the City is not trying to recreate a forest in an urban developed area.

4. The City of Bellevue combined Shoreline under Critical Areas in the last Shoreline update.

Did You Know:

a. There have been two (2) State Supreme Court rulings that stated Shorelines and Critical Areas are separate and cannot be combined. They are separate. **48.15**

   i. It is illegal and against the law to combine Shorelines and Critical Areas.

b. Knowing that the law was broken by combining Shorelines and Critical Areas, the City of Bellevue attorneys went to the State Legislature and had the regulations created under the illegal combination kept in force. **48.16**

c. If you are aware of these State Supreme Court rulings and knowingly allow and accept the rulings created under illegal means and accept or allow new rulings based on the past illegal regulations, you are committing Fraud by dictionary definition. **48.17**

   i. **Definition of Fraud:** (1) Deceit or Trickery. (2) Breach of confidence by which it is sought to gain some unfair or dishonest advantage. (3) A person who makes deceitful pretenses; imposter.

d. ***Note***: I am not an attorney. I am a citizen who cares how our appointed and elected officials reach decisions that impact and affect citizens of our city.

e. ***Question***: *Does committing Fraud carry any weight with your Ethics or Moral Compass? Or is it just part of doing business as usual? Each of us has to answer those questions in their own way.*

5. First Shoreline Update Open House:

Did You Know:

a. It was not well attended and only a few people were there when I was.

b. I had the time for dialogue with Mr. Paine and Staff. Following are questions and answers: **48.18**

   i. Question to Paine: Why is the Open House so poorly attended?

      1. **Answer**: There appears to be little interest.
      2. **My Reply**: Oh, there is a great deal of interest. The City process for notification has always been minimal and people do not see them or know about the meeting. When the people do understand and see the restrictions of the current regulations and the impact of what you are proposing, the people will be very surprised and very upset.

3. **Staff & Mr. Pains response**: We are not trying to take away property. The main work was done in the previous update through Critical Areas and the new regulations are mostly for public properties; there will be little impact to private property.

ii. Question to Mr. Paine: I see there is no Citizen Advisory Committee to help guide and create policy as is customary for City Projects and Shoreline updates. May we have one? **48.19**

1. **Mr. Paine's Reply**: It is certainly possible.

c. Shortly after and through some research, I found out the citizens were not getting a Citizen Advisory Committee.

6. In 2009 the City of Bellevue confirmed that the City Planning Commission was chosen as the Citizen Advisory Committee.

Did You Know the Reasons given?

a. Mr. Paine informed me of the reasons: **48.20**

i. The forming of a Citizen Advisory Committee was discussed between Staff, The Planning Commission and The City Council.

ii. It was determined by the City Council the Planning Commission would represent the interests of the citizens and help direct Staff and craft policy as a "quasi" Citizen Advisory Committee.

iii. The most difficult Shoreline issues were dealt with during the Critical Area debate.

iv. The perception was the community was exhausted by such efforts.

b. ***Note***: The Results of the City decision:

i. The Citizens and The People were left out of the process of guiding Staff and crafting policy because of: **48.21**

1. A City of Bellevue City Council decision
2. Poor Information
3. False Perceptions
4. Illegal combining of Shorelines under Critical Areas and subsequent regulations based on illegal practices.

c. ***Questions***:

i. Does taking away the only avenue for real input in the Shoreline process raise any Ethical or Moral questions for you? Or is it just business as usual:

ii. Does having the City of Bellevue close the only real opportunity for citizens to make a difference in a process the City states is Open and Fair cause you to pause and think maybe what the City is doing is just a bit Not Open and actually Unfair to the People and the Process?

iii. Each of us must answer the questions in our own way and live with the consequences.

7. City Staff Menu Driven Options for the Planning Commission. **48.23**

a. Staff created a Menu driven list of suggested new rulings for the Planning Commission to choose from and guide staff:

Did You Know:

a. Staff created and hand picked the rulings. There was no input as to why they were chosen from outside of City of Bellevue. **48.24**

b. The Planning Commission and citizens in attendance could not understand what the rulings meant or how they would be used and Staff could not explain. **48.25**

Broken Promises in a Broken Process - Handout

The official COB paper states in large type – It is Our City. Unfortunately, when it comes to Shoreline Management, it is not true. If it were "Our City", the entire process would have been Collaborative – City working with the People. The entire process has been Combative – a City working against the People and Separate from the People who have tried to be involved. **48.26**

All who have attempted to work with Staff, all the expert outside testimony, the attorney information – all has been eviscerated, gutted and thrown out like garbage. **48.27**

It is sad when the city I choose to live, raise my family and pay my taxes shows through their actions and inactions they do not care what I and other concerned people have to offer, ignore our participation that was asked for, and refuse outside, expert information.

How do I know this?
I have watched, listened and been active in the Shoreline Process long before the 1st open house. Here is what I saw and learned:

1. Staff had told me it is time to hear from citizen about how to craft policy. **48.28**
2. Staff told me we could have a Citizen Advisory Committee as is customary in substantial revisions and then told me much later the Planning Commission will be the "quasi" CAC. The reasons:
    a. City Council decided The Planning Commission would represent the citizens interest.
    b. Perception was the community was exhausted by such efforts. **(Not true)** **48.29**
    c. Potential candidates to serve on the committee would be hard to come by **(Not true)**
    d. Many difficult Shoreline planning issues were dealt with during the Critical Area debate. **(Shown to be illegal by State Supreme Court rulings)**
    e. Bottom Line: We did not get representation through CAC due to:
        i. A City Council decision to terminate safeguards stated as available to citizens in City Projects and Shoreline revisions by not supporting the normal city procedure and not supporting the customary procedure for a Shoreline Major Revision.
        ii. Poor information
        iii. False Perception.
        iv. The Illegal combining of Shoreline and Critical areas.

Did you Know:

1. I was told we could have a CAC long after it was internally decided the Planning Commission would be the "quasi" Citizen Advisory Committee. **48.30**
2. After research, I learned The People would not have an Advisory committee.
3. A Shoreline Master Plan is based on State guidelines but supposed to be tailored to the specific needs of the community. **48.31**
4. The City of Bellevue only did the absolute minimum for public involvement. The second largest city in the state, that prides itself on working with the people and Openness, <u>only did the absolute, mandatory, bare bone minimum. **Why?**</u> **48.32**

3. Mr. Paine has told me from the beginning:
    a. Bellevue's shorelines are mostly developed and as consequence we do not expect major changes from past practices in this update, especially on private property. **(This is not true, either)** **48.33**

Did you Know:

1. For over 4 years, in every conversation I had with Mr. Paine and Staff, it was stated there would be only minor changes to homeowners and that the major work was done in the 2005 update **under Critical Areas** **48.34**
2. Question: Knowing what you know now and reading the draft, do the years of talk match the truth? **No, it does not.**

I have seen Staff us Watershed Co. as their scientific source - A company that works for and with the city and wrote the city handbook on Restoration. **48.35**

a. Now the City has created a Closed End, Internal City Process with Unlimited Power, No Accountability, No Public Safeguards, No Accessibility, and No Outside Influences or Controls.
   i. **COB** City Staff creating changes; a **COB** City Planning Commission as "quasi" guidance to help craft policy; data from Watershed Co, a company with a beneficial, bi-directional working relationship with the **COB**; and the **COB** Council as Overseer and Final Authority **48.36**
   ii. That is an interesting Closed End scenario for an open process.

Did you Know:

a. Watershed stated in the official Bellevue CD handbook on Restoration that if any owner used their templates for a restoration project, Bellevue would accept the plan. **48.37**
b. Bellevue and Watershed have a bi-directional, mutually beneficial working relationship.
c. Watershed put far more than the minimum plantings on every plan and did not tell the owner. **48.38**
d. Watershed used WSU and King County as their guide for Native Vegetation. **48.39**
e. The City of Bellevue never explained what Native Vegetation meant in any of their official notices to the public. **48.40**
f. Native Vegetation meant trees over 200 feet tall when the dictionary states vegetation as community of plants in a region. Bellevue made no mention of trees and the definition most all understands is: plants are low growing and trees are tall and not plants. **48.41**
g. No one in Bellevue's restoration project could tell me why 2 Evergreen trees were mandatory. **48.42**
h. Bellevue never looked at the properties on the lakes to see there were more Evergreen trees around the lake than in Bellevue parks. **48.43**
i. Insurance providers explained any tree that could fall on your house is a liability and the home would be subject to higher premiums. **48.44**
j. Bellevue has taken some native vegetation ideas from another state and applied them to Bellevue Restoration. **48.45**

4. I have seen Staff & Planning Commission listen to outside, expert advice on the scientific evidence and shown multiple flaws where facts ended and guessing began. **48.46**
   a. Staff , nor any city entity, reference any of the advice in any way – only silence and disregard of data that challenged Staff view.

I have seen Staff offer the Planning Commission a menu driven, ala carte options which no one could understand. Even Staff could not answer question on Phantom Lake or questions on setbacks and how the rules would change depending on the setback distance. **48.47** **48.48**

a. How is anyone going to understand the regulations and how they relate and integrate with other existing rulings when the people who create them can't explain them? **48.49**
b. This method is a lawsuit in the making.

We have all seen Staff combine Critical Areas and Shoreline Management which has been proven by 2 State Supreme court rulings to be illegal. **48.50**

a. You cannot combine CAO's and SM.

I have seen the COB attorneys do an end run around The People and the Shoreline process by going to the State legislature and keep the current regulations, based on illegal practices, in place. **48.51**

a. Why was this necessary if the process is a as presented – An Open Process with City and People working together for solutions and Common Vision?

After the Attorneys have the current rulings kept in place, Staff magically states that CAO's and SM are no longer combined. Poof, it never existed. **48.52**

a. Yet, nothing changed and the regulations remained. Only some verbiage was altered.

And now Staff has submitted over 350 pages of unreadable, updates and, apparently, expects the PC, all involved and The City Council to understand dissect and refine the draft in an impossibly short amount of time. It cannot be done and all of us, every one of us knows it. ***At least not completed Properly and Fairly – if that carries any weight or value to City of Bellevue personnel.*** **48.53**

Recently I have seen the COB and the City Council have a Peer Review of Sound Transit's analysis in its supplemental environment review. **48.54**

a. We requested peer review and were denied through the silence of Staff.
b. Unless everyone believes the SM is not as relevant, it, too, deserved an independent peer review. The data must be accurate and not guesses.
c. You cannot have it both ways: Peer Reviews only when you want. ***Or, Can You?***

So, what has happened over the past 4 years I have gone to Open Houses, attended meetings, read pamphlets, spoken at meetings, written Staff, written PC and the City Council? **48.55**

Not much:

1. Staff ran the show.
2. Staff & Planning Commission ignored outside expert advice and council.
3. Staff & Planning Commission has ignored the Attorney who has helped other cities resolve their SM issues.
4. Staff is still not answering questions they cannot answer or do not want to answer.
5. For me, Staff pretty much told me lies and is going about their business of creating the most stringent and unwarranted set of regulations no one can understand.
6. We did not get participation: The City Council, City Staff and City Planning Commission saw to that by taking the option away from The People.
   a. We were not allowed to help craft policy.
   b. We were not allowed to have a Citizen Advisory Committee.
   c. We were not allowed an Independent Peer Review.
   d. The People got nothing in the new draft but slight change in verbiage.
7. The City has created a Gold Mine.
   a. City is getting all they want: City get the Meydenbauer project, City has unleashed the most restrictive regulations – ***that are not required*** – that are far reaching beyond any Federal, State or City guideline, and the City is giving the People and the Shoreline Process the working end of the Gold Mine - ***The Shaft.***
      i. ***Some may thing this is good Politics but it is Poor Ethics, lacks a Moral Compass and is a lousy business model for current and future projects.***

Is this what you want your Legacy and City Reputation to reflect? If not, then treat this draft as if it were a legal document you had to personally sign and carry the Responsibility and Liability – Without a Disclaimer. The City wrote the draft without The People or outside influence or assistance. If the City is trying to Crush and Extinguish Citizen's Rights and Liberties with expensive regulations that are *highly questionable*, not required, and based on *past illegal practices*, and Without Representation, then so should the City carry burden and responsibility.

If you see Discrepancies, Omissions and Deception in the Shoreline Process and Draft that due not meet your Ethical and Moral Standards for Accuracy and Accountability, as a citizen or as a city person representing the People of the City, then stand up and say so. Be the officials we hoped you could be and would be when you were elected.

The evidence and Proof of my statements is all before you in the 350+ pages of the Draft Update. **48.56**

- It is filled with years of Discrepancies, Omissions and Deceptive Practices.
- Try to read the unreadable.
- Attempt to understand the interaction, the causes and affects of these rulings no human can understand.
- Listen to what has been requested by caring people who are trying to work with the city.
- Review what has been excluded; items you as city representatives and human beings would not allow but should.
- See how you can ask for help from outside, independent sources and make changes for the better.
- If nothing else see how the Shoreline process has failed all of us and take the time to correct it.
- Treat the draft as if it were a document you had to personally sign and carry the responsibility and Liability. If you cannot read it, if you cannot understand it and know what it says and means, you should not sign it - ***Return it to Staff.***
-

Did you Know:

Even Mr. Paine stated at the last Open House: Having the Planning Commission represent Citizens Interests and Participation was not a very good idea in hindsight. **48.57**

I have spent over 40 years helping people craft mutually beneficial agreements that they can live with. This Shoreline Process has become a ***Broken Promise to The People***. It is not about The People participating and helping craft policy, but rather about the City of Bellevue working against their citizens; its about Politics, Deceit, Trickery and about Extortion where City Takes All.

Is this what you meant? I don't know; it may be. But I can tell you that is what is in this Draft and what the People are getting.

I ask you Why and for What Purpose?

My final thought: There have been great and many mistakes and missteps in the process over the past four years. Will you work with The People and can we work together to solve the problems?

Tom Shafer
Citizen of Bellevue
425.746.3650

Tom Schaffer,	the shoreline citizen input process is a perfect example of a bad policy becoming destructive. The city did not change the rules for citizen participation, but it did change how the city should use and interpret them. When the new interpretations were not challenged or understood, they became the new norm and the city's expectation for future products. Placing all shorelines into the category of critical areas was accepted, and restoration plans based on illegal rulings followed. The city then enforced the illegal rulings. Staff lied to the citizens for four years by telling them there would be no major impacts to private property. The Council determining that the Planning Commission should serve as the citizen advisory committee eliminated any real process for the citizens to help draft policy. No independent peer review was done to verify the purported facts. All of that was deemed acceptable to the city. The city eliminated citizens from the process, constructed a closed-ended process instead, crafted rules based on illegal practices, and created an unfair advantage, all of which is a textbook definition of fraud. The city is systematically crushing the rights of the people and exterminating the liberties of the people with extensive rulings that are highly questionable, not required, based on illegal practices, and all without the representation of the people it serves. The shoreline process is a broken promise to the people. It is about the city working against its citizens, and it is about trickery, deceit, exclusions and extortion. The proof is in the draft that no one can understand. In the end, the product will take away rights and steal property. Approval of the draft will give the city everything it wants, will throw citizen rights under a moving bus, and will give all the citizens the shaft. The inequities can be corrected by: taking a serious look at the sensible plan alternative, which is clear and readable and addresses the issues in a straightforward manner; by following the existing instructions for real citizen participation in city projects and shoreline updates; and by reading the papers written by the founding fathers who also were fed up with not having representation. The Bill of Rights sets limits on what government can and cannot do in regard to citizen freedoms; it trumps the staff and is the definitive instruction book on government limits. The Commission has the freedom not to accept the draft as presented by the staff; it can stand up and make the necessary revisions.	**48.58** **48.59** **48.60** **48.61** **48.62** **48.63** **48.64** **48.65** **48.66** **48.67** **48.68**

Tom Mearing,	voiced his support for the Washington Sensible Shorelines Association sensible shoreline plan.	**49.1**

CHERBERG

commonality of assets & opinions

Comments to Planning Commission, 25 May 2011
Shoreline Master Program

Evident lack force of mistrust between citizens & their government.

My name is Jim Cherberg. 3229 106th Ave. SE., Enatai neighborhood.

There are issues of trust.

I am here to offer a suggestion to help jump start the Shoreline Master Program, should it be passed as currently proposed. My suggestion is to eliminate ALL maritime activity on Lake Washington to help restore the ecological balance of the lake. In my view, that preposterous statement is only matched, if not exceeded, by many of the proposals being presented to you by the Planning Department.

50.1

I have had personal experience with the Planning Department that began in March, 2008, when I began efforts to subdivide my property. My experience has not been pleasant. This is not to say I believe all people in the Planning Department are bad people. On the contrary, I found some to be very cordial, punctual in response, reasonable, helpful, and understanding of the issues involved in my project. But I think some staff members could perhaps be caught between a rock and a hard spot created by others whom, I believe, are zealously overstepping their bounds while supposedly representing me, the general public, other shoreline property owners, as well as the best interests of the future of Lake Washington.

As my project progressed I was informed I would be required to place a 25 foot setback of a 100 foot shoreline property into a conservation tract. Little was offered to explain the purpose of this requirement other than that it was code recently passed. Less was explained as to what would happen to my property as a result. I instinctively felt this was an effort to usurp my property. The Merriam Webster dictionary defines usurp as: To take possession of without legal claim; to seize and hold by force or without right.

I enlisted a land use attorney to rebut the Planning Department's efforts, but whose services I subsequently terminated when it seemed he was acting only as a mouthpiece for the Department and reiterating that which I had already heard. I would have to comply. I felt he wished to protect a rather cozy relationship with the Department. What power did the Department have? If you want to do this, then you have to do that. Daunted, I capitulated and continued forward, all the while thinking this is not right.

I trusted my government.

My project became more and more byzantine, being handed back and forth between planners. As one requested item was satisfied, another would pop up. It was maddening.

I came to look upon the remittance statements with sarcasm. While the statements say, "Service First," and excuse me ladies, I was beginning to wonder what connotation I should actually place on those words.

I consulted the County Assessor. What happens to my property? Goes away!

Fortunately, at the last hour I met an attorney who had the gumption to tell City: You can't do this. The conservation tract was illegal, having yet to be approved by the Dept.

additional & mitigation

of Ecology. After tens of thousands of dollars in unnecessary engineering and legal fees, and nearly three years of aggravation, a settlement was reached.

I started attending Planning Commission hearings and have seen glossy presentations given by supposed experts brought in by the Planning Department. The Commission and audience heard terms such as "best available science" and about the benefits of woody debris. **50.2**

We saw what were undoubtedly pretty pictures of alpine lakes. Problem: No homes, no boats, no people. Comparing an idyllic alpine lake to what a major urban lake should be characterized by is misguided and impractical.

Just this Sunday I saw some woody debris, a 25 foot deadhead log and root stump floating mid-lake about 500 yards south of the East Channel bridge. Problem: If the Mercer Island Police or King County Sheriff boats don't lasso it first and corral it at the boat launch under the bridge, according to the SMP if I understand correctly, when it washes up on someone's beach it needs to remain. **50.3**

A rotten tree on the shoreline is inviolable. Problem: If I understand correctly, City indemnifies itself against any liability should the tree snap and damage property or kills someone, since it is not to be removed.

The proposed SMP has changed the previous term of "conservation tract" to the gentler sounding "native vegetation preserve." Problem: The SMP still does not explain the truth that the homeowner is essentially losing his or her property. **50.4**

The recommended guidelines in the Green Shorelines pamphlet handed out a few weeks ago at the open house contains lots of visually appealing pictures as motivation to move bulkheads and create beach areas. Problems: The beach area photos do not show what also washes up with woody debris: Aluminum cans; flip-flops; plastic bags and bottles; PFDs; rubber balls; Styrofoam cups, and whatever else may float. **50.5**

And it just ain't true that a beach discourages geese from coming onto a lawn if no bulkhead exists in between. Just Monday, mommy and daddy geese and their 5 little goslings merrily kept walking right onto my beach level patio and had a grand time nibbling my lawn and pooping on it.

The bottom line is the preponderance of the proposals in the SMP are far too utopian to achieve. **50.6**

Are you not impressed with so many people saying the same thing in similar words?

Questions: To what extent will the Planning Department go to push its agenda? **50.7**

What is its real agenda? **50.8**

Does the Planning Department really consider itself to be the sole conservator of Lake Washington? **50.9**

How many planners are lakefront residents? **50.10**

As a shoreline resident, I am not opposed to regulations that are fair, objective, and balanced. **50.11**

As a shoreline resident, I am opposed to regulations proposed by those who seem to cavalierly disregard the prohibitively expensive and punitive shoreline remedies they are attempting to impose on shoreline residents simply because that is where they live.

upland development

contributors → Seversen
storm water
silt
12 volt battery

what is ironical is that our taxes are paying you to oppose us; then we have to pay to oppose you.

= Absurd =

- it is up to you to sift through the nefarious, backroom politics -
- if you are fair - the eventual SMP will have very little semblance to the one being proposed.

- issues of trust between citizens and government.

Jim Cherberg,	suggested eliminating all maritime activity on Lake Washington to help restore the ecological balance of the lake. He allowed that such an action would be preposterous, just as many of the proposals brought forward by the planning department. He said he had a personal experience with the planning department that began in March 2008 involving an effort to subdivide his property. The experience was not pleasant. While some of the staff were very competent, others overzealously overstepped their bounds while supposedly representing the general public, shoreline property owners, and the best interests of the future of Lake Washington. He said he was informed that he would be required to place a 25-foot setback of the 100-foot-wide property into a conservation tract, though the purpose for the requirement was not explained other than to say it was recently passed code. The requirement was a clear usurpation of property, which is defined as taking possession without legal claim or right. A land use attorney was enlisted to rebut the position of the planning department, but his services were terminated when he acted only a mouthpiece for the department. Capitulating to the department's demands was the only way to move forward, even though it was not right. The project only grew more and more complicated as it was handed back and forth among planners; as one request was satisfied another would be made. After consulting the county assessor with regard to what would happen to the property, it was learned that it would go away. At the last hour an attorney was found who had the gumption to tell the city they could not do what they were demanding, that the conservation tract was illegal in that it had not yet been approved by the Department of Ecology. After tens of thousands of dollars having been spent unnecessarily, a settlement was reached. During the Shoreline Master Program update process the Commission has heard from staff and supposed experts about things such as best available science and the benefits of woody debris in the water. Pretty pictures of alpine lakes without homes on their shores were shared in an attempt to compare alpine lakes with urban lakes, which was both misguided and impractical. Dead trees in the water will become safety hazards, for which the city will be indemnified. The draft has changed "conservation tract" to "native vegetation preserve," but it still does not explain that homeowners will essentially be losing their properties. It is not true that a beach discourages geese from coming up onto a lawn if no bulkhead exists in between. The bottom line is that the preponderance of the proposals in the draft Shoreline Master Program are far too utopian to achieve. The Commissioners were asked if they were not impressed by the commonality of the objections to the plans being proposed in the Shoreline Master Program; the shoreline property owners are in agreement. What the real agenda of the planning department is has not been clearly outlined. It appears to think it is the sole conservator of Lake Washington. Shoreline residents are not opposed to regulations that are fair, objective and balanced. The community's vision for shoreline management should be reflected in the Shoreline Master Program. The process has evidenced an inherent mistrust between citizens and the government. Taxpayer dollars are being spent to oppose the very citizens who pay them, and the citizens are having to pay even more to oppose the city.	**50.12** **50.13** **50.14** **50.15** **50.16** **50.17**

My name is Michelle Parks; 16011 SE 16th Street in Bellevue on Phantom Lake

• **Talk about Conservation Easements and "Wild Life Corridors"** and **inappropriate PREDATORIAL animals** in our neighborhoods

• **Family walk at MID-DAY—saw BIG coyote!** Size of a **full grown German Shepherd!** 20 yards, **not intimidated** by us at all. A neighbor who walks his dog often has seen them **traveling in packs.**

• **A recent article in the Bellevue Reporter** what to do if you encounter **coyote, cougars or bears** in our neighborhoods; small children easy target **51.1**

• **Beavers also a problem**: They have an **opposite goal** of **blocking** Phantom Lake's **ONLY outlet** which can cause flooding

• **The Article in the Seattle Times last Thursday:** A young **black bear** wandering between **2 Bothell schools!** Caused the **schools to go on lockdown and cancel activities**.

• **The SMP draft proposes:** No fences down to the water. This is unreasonable because if these problems continue or get worse we won't be able to protect our families and especially our children from these wild animals.

• **The Restoration Plan Programs are proposing PL-2 and PL-3:** **51.2**

PL-2 is basically "beautifying" the man made inlet drainage ditch which comes from the polluted landfills detention pond into Phantom Lake.

Why spend money on beautifying a man made drainage ditch no one even sees when there are much higher priorities for that money? Not to mention that **Polluted inlet waters are inappropriate** for encouraging wildlife habitat!

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline." **This is exactly what we DON'T want to do!** There are **many retirement age residents** on Phantom Lake and **it is scary to think** of the city buying up those properties as they become available **and creating conservation easements** to encourage these inappropriate wild animals. There have been cougar sightings as well. **You wouldn't lead a pack of coyotes or cougars into downtown Bellevue**, so why encourage them right into our back yards where our children play! **51.3**

• **Instead, PL-7 is a better idea.** We started a petition that shows that **over 90% of the shoreline residents** as well as **all of the outlet residents** (except one we haven't been able to reach) are in opposition to PL-2 and PL-3, and rather **in favor of our own PL-7** which proposes **transferring inlet** restoration to the **outlet** where **erosion has always been recognized as a problem.** **51.4**

• **Several residents** have recently had their **dogs attacked and bitten by coyotes RIGHT IN THEIR BACK YARDS,** and cats have been disappearing. **I'm truly afraid for my young kids!** This problem already seems to be increasing. **I think these animals are growing in number and getting bolder.** **51.5**

The only **logical and responsible** thing to do is to **take actions to DISCOURAGE these inappropriate predators** from coming into our neighborhoods **NOT to encourage them with conservation easements and wild life corridors!**

• **It's not even in the best interest** of the animals! **Animals are more likely to be hit by a car** if they are in neighborhoods. **Animals are safer away from residential areas, and people are safer if these animals are away from residential areas.**

• I know many **others share my concerns**.

• I have a darling little curly headed 5 year old boy who loves to play in the yard with his big brother and swing swords or light sabers. There could be a hungry coyote or even pack of coyotes hiding in the thick brush waiting to harm him and or his brother. He would have no chance of protecting himself.

This is very serious. We're talking about human lives. **I sure hope a little child doesn't have to be harmed** or even killed before preventative action is taken.

• **I support the WSSA's Sensible Plan.** **51.6**

• **I'd like to submit these petitions** opposing PL-2 and PL-3 and **supporting PL-7.** Thank you.

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Glenn Regan	GRegan	16208 SE 24th Bellevue	
Maryan Regan	MRegan	"	
DOUG YAMAUCHI	DYamauchi	16212 SE 24th Bellevue	
Flora Jayne Sherman	Flora Sherman	16230 S.E. 24th Bellevue	
James Sherman	[illegible]	" "	
Gale Baullinger	Baullinger	16226 SE 24th Bellevue	643-2722
Barbara Yamauchi	B. Yamauchi	16212 SE 24th Bellevue	

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** . have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Tom Danieli	[illegible]	15805-SE 16	425-747-1220
Jackie Danieli	[illegible]	15805-SE16	425-747-1220
Jeff Krueger	[illegible]	15861 SE 16th St.	425-747-8092
Maria Danieli	[illegible]	15861 SE 16th St.	747-8092
Marco Catuvegli	[illegible]	15859 SE 16th St	425 269 90-44
Siri Sunderta Kat	[illegible]	15859 SE 16th St.	425-269-9044
SARA FOWLER	[illegible]	16155 SE 16th St	425-671-9336
Ray Smith	[illegible]	16254 SE 26th	425-795-4486

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**.

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Steve Blatt		16170 SE 16th St	425-440-8880
Ilana Long	Ilana Long	16170 SE 16th St	425-440-8880

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet, **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
J. Torrentegui	J. Torrentegui	16515 SE 19th St	747-8936
KAY TORRENTEGUI	Kay Torrentegui	16515 S.E. 19th ST.	747-8936

425.830-4290

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Judith Heber	[illegible]	16108 SE 24 St	425-830-0716
Gerald J. Heber	[illegible]	16108 SE 24th St	425-644-8876

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream;**
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation,**

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Ralph Pond		16106 SE 24th St.	(425) 641-4881

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Jo Moore	Jo Moore	16604 SE 17th Pl	206 240 4665
Alycia Gerlach	Alycia Gerlach	16604 SE 17th Pl	uwswimgirl@yahoo.com alycia.gerlach@gmail.com
Nolan Gerlach	[illegible]	16604 SE 17th Pl	206 854 6317
Susan Lamont	[illegible]	16041 SE 16th Pl	4254498429

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
DAVID R. CLARKE	David R Clarke	16280 SE 24th ST. BELLEVUE WA 98008	425-746-7706 MADAAK@AOL.COM
Mary B Clarke	Mary B Clarke	"	425 466 7388 cell

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**.

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Judith Heber	Judith Heber	16108 SE 24th	4258300716
Cheryl Ebeting	Cheryl Ebeting	1845 164th Ave SE	425-643-6550
Mary Heath	Mary Heath	16640 SE 17th Pl.	425-865-0217
Mary Ann Hymel	Mary Ann Hymel	16669 S.E. 17th Pl.	425-641-1082
PHILIP HYMEL	Philip J. Hymel	16669 S.E. 17th Pl	425-641-1082
JERRY LISZAK	Jerry Liszak	16663 SE 17th PL	425-644-0190
ALICIA ENOS	M. Enos	16671 SE 17th Pl	425-652-7806
Edward Gaussen	Edward Gaussen	16646 SE 17th Pl	425-373-0937

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
SHERYL BALL	Sheryl Ball	16260 SE 24th St 98008	425/564-8415
TRIMA	[illegible]	16260 SE 24 98008	425 5648415

PHANTOM LAKE Shoreline Residents
PETITION IN OPPOSITION TO SHORELINE MASTER RESTORATION PLAN AND IN FAVOR OF OUR PL-7 "OUTLET CHANNEL RESTORATION"

We the undersigned residents of Phantom Lake do hereby oppose SMP Final Draft's Shoreline Restoration Plan items PL-2 & PL-3 and propose a new PL-7 to restore Phantom Outlet Channel as far as Weowna Park Boundary:

PL-2 States: "Phantom Lake inlet channel - create > 100 feet of stream meanders, install LWD, replant with native veg (>4,000 s.f.), reduce shoreline hardening and improve overall habitat complexity."

- Inlet ditch from Pond-A to Phantom Lake is **not a natural stream**;
- Inlet channel, like outlet , **is on private property** which Utilities stated they were not willing to take on maintenance responsibility for;
- **Polluted inlet waters inappropriate** for encouraging wildlife habitat; and
- Disturbing existing hardening and replacing with soft stabilization **encourages sedimentation**,

PL-3 States: "Acquire lake front property as it becomes available & set-up conservation easement along shoreline."

- Phantom lake is a "private lake" and City already owns over 25% abutting acreage so **residents oppose increased City ownership** and wish to maintain residential nature of Phantom Lake shore lands;
- "Conservation" designation **increases regulation limitations** for residents and is not consistent with residential nature of Phantom Lake shore lands;
- **Increased presence of predators**, such as large dangerous coyote would be inappropriately encouraged into our neighborhoods by such a wildlife corridors leading from Greenbelt; and
- Resulting **loss of valuable views** of the lake would result from property owner's or adjoining properties having newly created "buffers" in which volunteer willow trees and bushes grow up.

PL-7 Proposes: "Phantom Lake outlet channel – Restore slope depth to 1930 tile culvert baseline, install bank erosion control, replant channel shoulders with stabilizing native veg (>4,000 s.f.), remove weir hardening which impedes flow and reduce overall erosion & sedimentation."

- **Staff have been hindered** from helping maintain basin's critical outlet due to Utilities' policy limitations on "private property & culverts" ;
- Phantom Lake's **water quality is jeopardized** by congested outflow, which can lead to toxic algae & West Nile Virus; and
- **Erosion problems** , have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
AARON LLOYD	Aaron Lloyd	16601 SE 17 PLACE	hotmoka@msn.com
JUDY LLOYD	Judy Lloyd	16601 SE 17th Place Bellevue WA 98008	"

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Merwyn Haneberg	Merwyn Haneberg	16114 SE 24th St Bellevue 98008	425 643-4733
BRITT HANEBERG	Britt Haneberg	16114 SE 24th ST BELLEVUE, 98008	425 643-4733
BRIAN PARKS		16011 SE 16TH ST BELLEVUE WA 98008	425 562 0816
Bill Rahr	BILL RAHR	16509 SE 18TH	425-746-4803
Elfi Rahr	ELFI RAHR	" "	" " "
William Trabold		1425-163 Pl SE	425 747 0292
Norma-Jean Trabold		✓	✓
	SCOTT SHEFFIELD	2220 W LK SAMMMAMISH PKWY SE	425-641-5720
Lyle Gunderson		1094 W LK Sammamish PKW NE	425-562-0900
PITAK SITTHI		16035 SE 16TH ST.	(425) 502-7368

Draft SMP Comment #51 - Michelle Parks
May 25, 2011 Public Hearing

Comment #51

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
PETER BURGER	Peter Burger	16122 SE 24th	AIRBEARINGS@MSN.COM
Carol Burger	Carol Burger	"	"
Norman Baullinger	NC Baullinger	16226 SE 24 ½ St	ncbaull@aol.com
Donna Miles	[illegible]	15828 SE 24th St	phantomdonna@hotmail.com
BOB MORRISON	[illegible]	1810 W. Lk Sam NE	BOB.MORRISON@LEWISBUILDS.COM
Jonathan L. Knight/n	Jonathan L Knight/n	16061 SE 16th St Bellevue, WA 98008	suchaluckydoc@MSN.COM
Genevieve Tremblay	[illegible]	16401 SE 17th St.	tumbug@comcast.net
Alla. Alef	Allen Alef	1426 163rd Place SE	~~ALLAN~~ AJAlef@ISP.com
WILLIAM RAHE JR	Wm Rahe	16500 SE 19TH ST	425 4444803
PAUL R. HARVEY	PR Harvey	2020 W. Lake Sammamish SE	425-747-3214

Draft SMP Comment #51 - Michelle Parks
May 25, 2011 Public Hearing

Comment #51

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
THOMAS J FITZGERALD	Thomas J Fitzgerald	16350 SE 16th Bellevue, WA	tfitz@msn.com
Rosemary Fitzgerald	Rosemary Fitzgerald	16350 S.E. 16th Bellevue, WA 98008	same ↑
Janet Bean	Janet Bean	1414-163 RD Pl. SE	425-747-3298
JANNET T. JOBLER	Jannet Jobler	1405 163 RD PL SE Bellevue, WA 98008	425-641-0092
WILLIAM HAWKINS	[illegible]	1405 163rd PL. S.E. Bellevue, WA 98008	425-641-0092

Draft SMP Comment #51 - Michelle Parks
May 25, 2011 Public Hearing

Comment #51

_____, have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
Michelle Parks	Michelle Parks	16011 SE 16th St Bellevue WA 98008	425-562-0816
Mark Hays	Mark Hays	16025 SE 16th ST Bell 98008	206-550-4716
Wendy Hays	Wendy Hays	16025 SE 16th St Bellevue 98008	425 894 5335

Draft SMP Comment #51 - Michelle Parks
May 25, 2011 Public Hearing

Comment #51

_____, have been identified along this channel since early 1970's.

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
WARD JOHNSON		16030 SE 24th BLVU 98008	4256437461 WJOHNSON@AOL.COM
WENDY LOU JOHNSON		"	" wendyloudashj@aol.com
Vale Johnson		"	Johnsoy2@gmail.com
TIMOTHY F. CAVER		16034 SE 24TH ST Bellevue	425 766-9021
Galen Hunt		15824 SE 24th St, Bellevue, 98008	425-562-6014 galenh@microsoft.com

Draft SMP Comment #51 - Michelle Parks
May 25, 2011 Public Hearing

Comment #51

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
SCOTT SHEFFIELD		2220 W. LK SAMMAMISH PKWY SE	425-641-572
Anna Marie Clayhold		11041 SE LK Rd 98004	425-891-4243
MIKE ARNTZEN		636 LAKE SAMMAMISH LANE BELLEVUE, WA, 98008	4254455405
Mike MARIANO		16341 SE 16th ST. Bellevue	425.941.6222 mike@marianoinc.com
Kristi Goodwin	Kristi Goodwin	16051 SE 16th St 98008	425-746-4610
SARA FOWLER		16155 SE 16th 98008	641-9336
Diane Desgrosellier	Diane Desgrosellier	16039 SE 16th ST.	747-2735
John Desgrosellier	John Doyle	16039 SE 16th St	747-2735
KATHRINE CLARKE	Kathrine Clarke	16280 SE 24TH ST.	425-746-7706 clarkekj36@aol.com

Draft SMP Comment #51 - Michelle Parks
May 25, 2011 Public Hearing

Comment #51

NAME (PRINTED)	SIGNATURE	ADDRESS	PHONE OR EMAIL
James W Meyer	James W Meyer	16100 SE 24 St	JWMEY@MSN.COM
DIANA MEYER	Diana Meyer	16100 SE 24 St	JWMEY@MSN.COM
PATRICIA GRANT	Patricia Grant	16104 SE 24	425-641-7046
HUNG TAN	Hung Tan	16026 SE 24	425 643 4195
Linda Cowin	Linda Cowin	16034 SE 24th St	206 605-2200
MERRILL GRANT	Merrill Grant	16104 SE 24th St.	425-641-7046

Draft SMP Comment #51 - Michelle Parks
May 25, 2011 Public Hearing

Comment #51

Michelle Parks,	she and her family take a lot of walks in the area of Phantom Lake. Recently during a midday walk a very large coyote was spotted; the animal was the size of a full-grown German shepherd and was only about 20 yards away and was not intimidated by humans. A neighbor who often walks his dog has seen coyotes traveling in packs in the area. A recent article in the *Bellevue Reporter* talked about what to do if coyotes, cougars or bears are encountered in the neighborhoods, and talked about how small children are an easy target. Beavers are also a problem as they have the goal of blocking Phantom Lake's only outlet, which can cause flooding. A recent article in the *Seattle Times* talked about a young bear that was wandering between two Bothell schools, which caused the schools to go into lockdown and cancel all activities. The draft Shoreline Master Program proposes no fences down to the water, which is unreasonable because if problems with wild animals continue or get worse it will not be possible for shoreline property owners to protect their families. The restoration plan policy PL-2 proposes beautifying the manmade inlet drainage ditch that comes from the polluted landfill's detention pond. There are higher priorities the money should be spent on. Policy PL-3 directs the city to acquire lakefront properties as they become available and to establish on them conservation easements, which is exactly what local property owners do not want to see done. There are many retirement-age residents on Phantom Lake and it is scary to think of the city buying up their properties over time and creating habitat that will only encourage inappropriate wild animals. It would not be wise to lead a pack of coyotes or cougars into downtown Bellevue, nor is it wise to encourage the animals to live in neighborhood backyards where children play. Policy PL-7 is a better idea. Over 90 percent of the shoreline residents, as well as all but one of the outlet residents, are opposed to PL-2 and PL-3 and are in favor of PL-7 which proposes transferring inlet restoration efforts to the outlet where erosion has always been recognized as a problem. Several residents have recently had their dogs attacked and bitten by coyotes in their backyards. Cats have also been disappearing. It would appear the number of wild animals is increasing and they are getting bolder. The only logical and responsible thing to do is to take actions to discourage the inappropriate predators in the neighborhoods, not to encourage them with conservation easements and wildlife corridors. Hopefully no child will be harmed or killed before preventive action is taken. She voiced her support for the Washington Sensible Shorelines Association sensible plan and presented the Commission with petitions opposing PL-2 and PL-3 and supporting PL-7.	**51.7** **51.8** **51.9** **51.10** **51.11** **51.12**

Jim Mackey,	he serves as commodore of the Lake Sammamish Yacht Club. He said the sensible shoreline plan is only 20 pages long, whereas the draft Shoreline Master Program is 350 pages long. He suggested that there is no way property owners should be expected to read and understand 350 pages of regulations in order to determine what they can and cannot do with their properties. Demanding that every resident spend a week reading 350 pages of obtuse legalese is prima facie evidence of the unreasonable amount of regulation on homeowner properties. It will take specialists to interpret the code while city planners battle back with controversial elements from somewhere else in the code. The regulations are so complex city staff has resorted to mailing out cartoons that attempt to explain them. The 20-page alternative makes far more sense and has far greater clarity. The Commission should demand that the regulations be reasonable and take up no more than 30 pages. The fact is it will not be the cartoons that will be approved but the 350 pages of gibberish and doubletalk that only planners and hire experts will be able to interpret. If it takes 350 pages to spell out the regulations, there is more being restricted than is shown in the 19 pictures. Even in the staff summary it is evident that the regulations are misconceived, not thought through, unclear, and will be either ignored or battled by the citizens in perpetuity. Picture 2 depicts a boat lift and states that it must be in at least nine feet of water. The fact is that most boat lifts on the lake are not in water that deep. If a list must raise a boat under the three feet minimum, to be out of waves and water, particularly given the variable water levels over the ordinary high water mark, a 12-foot boatlift is needed on the shoreline and 16 feet on the lake line. Another ten feet is need for a boat to be able to go above it. That would mean a 26-foot high structure from the lake floor. The width of the structure will need to be the width of the cradle, or six to eight feet wide. The structure will be hit with four-foot waves. The regulation simply will not result in a safe structure. In most instances it is not possible to get to water nine feet deep 150 feet from the shore, so all boat lifts will be essentially banned. Such lack of awareness and technical incompetence on the part of the staff will result in unintended consequences and years of lawsuits which all taxpayers should object to. The pictures describe natural bulkheads. The logs in picture look natural and are heavy, but wood floats and cannot serve as a bulkhead for waters that flow over them. When most needed, during record high waters and with four-foot storm waves, the logs will become battering rams smashing the shoreline, smashing docks, and smashing homes at lower elevations. Homeowners who actually comply with the regulation will be told to release the city from liability for any damage the required solution creates. Broken rock is the alternative depicted in Picture 6, but a field of sloped broken rock and boulders is very dangerous to climb over. A boater could not pull a rowboat or catamaran over the rock without destroying the hull. The dock layout limitations simply will	**52.1** **52.2** **52.3** **52.4** **52.5**

	not be safe to use for any reason. The 350 pages of regulations are full of bad law which has not been tested or thought through. If enacted, the number of pages will only grow as it gets amended and interpreted. The book of regulations will only ensure a lifetime of full employment for those who are expert at interpreting it. The regulations will result in property rights being taken away without compensation.	**52.6**

Mr. Vic Bishop	one of the eight engineers who signed on to the letter previously submitted to the Commission.	**53.1**

Ms. Jill Moore	Support for the testimony provided and indicated her appreciation for the Bill of Rights. She yielded her time to Mr. Brian Parks.	**54.1**

Brian Parks, 16011 SE 16t St. I'm the Phantom Lake Homeowners Association VP and official SMP Representative. I'm also a WSSA Executive Board Member. I have been attending Planning Commission as well as Environmental Services, Eastgate Land Use, Parks Department, and other Commissions as well as Phantom Lake –specific staff and City Council Meetings since September 2009. It was at that time that I began a thorough investigation into the history of the lake and flooding matters.

I'd like to summarize some of what I have presented and included for the Hearing's record on WSSA's CD of electronic documents. We support WSSA's Sensible Plan. **55.1**

Unlimited permitted inflow to Phantom Lake, combined with blocking of natural outflow towards Larsen Lake, and lack of maintenance along the only outlet channel (a man made ditch) has led to both average lake level and Ordinary High Water Mark (OHWM) increases of 12"-18" since 1990 Restoration Plan actions of weir & berm on a lake that only typically fluctuates 12"-24" annually and about 36" from record high to record low. On these gradual kettle lake shore lands, this causes up to 75 horizontal feet shift in the "reach" on some properties of the SMP's regulatory Shoreline Overlay District, which is 200' from OHWM. We also have lost property due to the "etching" action of elevated water and waves and have seen advancement of wetland plants and saturated soil conditions. **55.2**

There are many other damaging consequences from increased OHWM and average lake levels, including destruction of shoreline vegetation, killing of mature and younger trees from root rot–some threatening homes and safety, loss of usable property, and nutrient loading of phosphorous sensitive water quality. This also could put some properties entirely within the 110' critical areas buffers, rendering them locked in or undevelopable.

Seeing that over 75% of the water budget for Phantom is from the 6' pipe from the old landfills Detention Pond-A, I'm convinced that much of these polluted waters high in heavy metals and other contaminants should be redirected away from lake to proper treatment. **55.3**

Residents have been complaining regularly for decades about these problems, starting at the development of the former Eastgate Airfield property into the I-90 Business Park about Dec 1980 when construction silt muddied our waters, and increasing since the regular and prolonged flooding following 1990 Lake Restoration actions. Utilities has had unsatisfactory responses and excuses to residents' concerns.

Now just this year we discover a 1972 streams report recommending an

economical lakes & streams municipal storm water conveyance system that included an outlet control structure on Phantom Lake outlet as a detention site, as did the 1976 Master Drainage Plan by Kramer, Chin & Mayo, which forewarned of increased outflow needed in excess of 20 CFS. An 1984 City staff memo discovered indicates Phantom Lake was in fact designated as "a detention site" or "reservoir" and intention of raising of lake levels! Then in 1990 the Phantom/Larsen Lakes Restoration Project also by KCM implemented this, telling residents it was for algae control, but neither the outlet channel grading nor culvert expansion from 2' to 4' it again recommended.

Residents have been told this is a private Lake with outlet on private property and that policies prevent public funds from being used for such maintenance, however we disagree, as city owns over 25% of abutting property as parks, there is public access to all of lake waters and lake is being used for storm water conveyance and detention as part of the municipal MS4 system.

Recently in collaboration with staff, several policies have been brought forth that we support, several of which are as follows:

1. Policy setting the OHWM for Phantom at a maximum weir height setting of 260.7 NAVD, since the lake level is controlled by an outlet control structure. **55.4**

2. The City pursuing a State grant in conjunction with Parks Department for cleaning and restoration of outlet channel, which has increased erosion problems from increased flow. **55.5**

3. The other specifics are included in Phantom Lake section and others of WSSA materials.

Thank you,

Brian Parks

Brian Parks	spoke as vice-president of the Phantom Lake Homeowners Association and official Shoreline Master Program representative. He noted that he also is a Washington Sensible Shorelines Association executive board member. He said he has regularly attended Planning Commission, Environmental Services Commission, Eastgate/I-90 CAC, Parks and Community Services Board meetings, as well as Phantom Lake-specific staff and City Council meetings since September 2009. It was at that time he began a thorough investigation of the history of the lake and flooding matters pertinent to updating the Shoreline Master Program. He indicated his support for the sensible plan produced by Washington Sensible Shorelines Association. Unlimited permitted inflow to Phantom Lake, combined with blocking of the natural outflow towards Larson Lake, and lack of maintenance along the only outlet channel, which is a manmade ditch, has led to both increased average lake levels and a higher ordinary high water mark; the increase has averaged 12 inches since the 1990 restoration plan actions on the weir and the berm. Given the gradual kettle lake shorelands, the increased lake levels causes a shift of up to 75 horizontal feet in the reach on some properties in the Shoreline Master Program regulatory shoreline overlay district, which is 200 feet from the ordinary high water mark. Property has been lost due to the etching action of elevated water and waves, and there has been an advancement of wetland plants and saturated soil conditions. Other damaging consequences include destruction of shoreline vegetation, the killing of mature and younger trees due to root rot, threats to homes and safety, loss of usable property, and nutrient loading of phosphorous-sensitive water quality. The increased lake level could also put some properties entirely within the 110-foot critical areas buffer, rendering them locked in and undevelopable. Given that over 75 percent of the water budget for Phantom Lake comes from the six-foot pipe coming from the detention pond for the old landfill, most of the polluted waters should be redirected away from the lake to proper treatment. Pond A, which was designed and specified for detention use, is being told merely as a water quality pond; it does not absorb the brunt of the storms, and its valves are wide open. Residents have been complaining regularly for decades about the problems, starting with the development of the former Eastgate airfield property in 1980. At that time construction silt muddied the waters of Phantom Lake, and regular and prolonged flooding followed the 1990 restoration actions. Utilities has had unsatisfactory responses and excuses in the past to the concerns of the residents. A 1972 streams report recommended an economical lake and stream stormwater conveyance that included an outlet control structure on Phantom Lake's outlet as a detention site. The 1976 master drainage plan recommended the same. A 1984 city staff memo indicates Phantom Lake was in fact designated as a detention site or reservoir, and the intention of raising the lake level was cited. In 1990 the Phantom/Larson lakes restoration project, installed the adjustable weir, though residents were told it was for the control of algae. The recommended culvert expansion and grading of the outlet channel, however, was never done. Residents have been told that the lake is private and that its outlet is on private property, and that therefore policies prevent public funds from being used for maintenance. The fact is the city owns over 25 percent of the abutting property for use as parks, there is public access to all the lake waters, and the lake is being used for stormwater conveyance and detention as part of the municipal MS-4 system. In collaboration with staff, several policies have been brought forward that the Phantom Lake	**55.6** **55.7** **55.8**

	homeowners support. The policies include setting the ordinary high water mark at a maximum weir height setting of 260.7 NAVD. The city is looking into pursuing a state grant in conjunction with the parks department to clean and restore the outlet channel. Besides regular flooding, other contributors to elevated phosphorous levels in Phantom Lake include increased shoreline vegetation and large woody debris.	**55.9** **55.10**

SAMBICA

11114 W Lake Sammamish Pkwy SE

My name is Matt Wimmer and I am here tonight representing SAMBICA located on the south west shores of Lake Sammamish. We are here tonight to voice our concern. We believe what is being proposed will have a Huge adverse impact on the children of our community we serve each summer. SAMBICA believes in conservation and preservation of this great place we call the Pacific NW. We want to work with the city to preserve this great lake for many future generations to enjoy. However, with what is being proposed we believe we would lose the ability to adequately serve children. Many of the children that attend our camps are parentless, come from lower income households, and do not have the simple comforts, security, or advantages that so many of us take for granted. If we lose our ability to provide fun and safe activities (ie water sports and recreation) then many of these children will be lost in the system. SAMBICA provides unforgettable experiences: Picture a child who comes to us from an apartment complex in Crossroads Bellevue and now finds themselves on an inner tube in the middle of Lake Sammamish laughing their head off next to two kids they didn't even know two days before. We take children out of an otherwise hopeless situation and for one or two weeks of their young lives give them hope. No drugs, no beatings by bullies, no gangs, but instead provide them an environment of love, empathy, and mentorship. We are in support of protecting our environment in a collaborative effort but we are here tonight to express our concern over what is being proposed. We ~~believe it is at the expense of our children.~~ agree with the comments expressed by our neighbors tonight. We hope ~~the SMP will be redrafted~~ for a redraft of the SMP. One not at the expense of our children. **56.1**

Matt Wimmer
CEO/Executive Director

Matt Wimmer	spoke representing Sambica camp. He said the camp is concerned that the proposed Shoreline Master Program will have a huge impact on the children served by the camp. Sambica believes in conservation and preservation of the lake. However, under what is being proposed the camp would lose the ability to adequately serve the children, many of whom are parentless, are from lower-income households, and do not have the comfort and security advantages that so many take for granted. If the camp loses its ability to provide fun and safe activities, including water sports and recreation, many of the children will be lost in the system. Sambica provides unforgettable experiences for children from a variety of backgrounds through an environment of love, empathy and mentorship. A redraft of the Shoreline Master Program should be produced, but one that will not be at the expense of the children.	**56.2**

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

May 25, 2011

Mr. Hal Ferris, Chair
Bellevue Planning Commission
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012

RE: Draft Bellevue SMP

Dear Mr. Ferris,

Thank you for the opportunity to review the City of Bellevue Draft Shoreline Master Program (SMP). The Draft SMP is the product of years of hard work on the part of the Planning Commission, staff, and citizens. The Department of Ecology (Ecology) comments are included below.

A. General Issues

1. In order to facilitate this and future reviews, we ask that the City complete a SMP Submittal Checklist. This item will assist in the preparation a complete SMP and facilitate Ecology's review of the SMP. **57.1**

2. LUC 20.25E.010.C.2

The Shoreline Overlay District jurisdiction needs to include all of Lake Washington and Lake Sammamish within Bellevue city limits. RCW 35.21.160 states that: **57.2**

> *The powers and jurisdiction of all incorporated cities and towns of the state having their boundaries or any part thereof adjacent to or fronting on any bay or bays, lake or lakes, sound or sounds, river or rivers, or other navigable waters are hereby extended into and over such waters and over any tidelands intervening between any such boundary and any such waters to the middle of such bays, sounds, lakes, rivers, or other waters in every manner and for every purpose that such powers and jurisdiction could be exercised if the waters were within the city or town limits. In calculating the area of any town for the purpose of determining compliance with the limitation on the area of a town prescribed by RCW 35.21.010, the area over which jurisdiction is conferred by this section shall not be included.*

3. All sections of ordinances that are to be included in the SMP need to be incorporated by reference into the SMP. Copies of all incorporated ordinances should be attached to the SMP. This can include ordinances relating to wetlands, streams, habitat for species of local significance, channel migration zone, flood, landslide hazard, erosion hazard, and seismic **57.3**

hazard areas. Standards relating to each of the subject areas that were not incorporated and included with the SMP have not been reviewed.

4. LUC 20.25E.030

57.4

In-stream structural uses should be addressed in the use matrix.

5. LUC 25.E.060.B.2 creates a rebuttable presumption that meeting the letter of the regulations will achieve no net loss of ecological function. It will be difficult to support his provisions in situations where the regulations do not provide detailed and specific standards. It may be helpful to identify specific types of development where the rebuttable presumption applies. Additionally, the cumulative Impacts Analysis will need to clearly support this presumption. **57.5**

LUC 20.25E.070.D.3.c New highways and roads need to be located outside of shoreline jurisdiction unless it is infeasible to do so or a shoreline location is necessary for the road to serve it intended function. **57.6**

6. For the Aquatic Management Policies, the requirements stated in WAC 173-26-211(5)(c)(ii)(B), (E), and (F) must be added to the SMP. This includes: **57.8**

> (B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
>
> (E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions.
>
> (F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

7. Pursuant to WAC 173-26-211(5)(c)(ii)(E), uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions. The SMP needs to identify critical fresh water habitats. **57.9**

8. The use preferences in the Shoreline Management Act support making provision for water-dependent uses. The Cumulative Impacts Analysis will need a use analysis documenting anticipated demand for shoreline uses. A rationale needs to be provided for not allowing water-dependent commercial uses other than marinas and yacht clubs. **57.10**

B. Vegetation Conservation and Setbacks

The SMP proposes to utilize a system of vegetation enhancement and conservation measures within shoreline setback on Lake Washington and Lake Sammamish. While Ecology is not opposed to the concept, it is important to remember that such an approach needs to demonstrate no net loss of ecological function in the Cumulative Impacts Analysis. **57.11**

It will be helpful to take notice of the shoreline guidelines in WAC 173-26-221(5)(b).

> *The intent of vegetation conservation is to protect and restore the ecological functions and systemwide processes performed by vegetation along the shorelines.*
>
> Also
>
> *Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduces. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.*

1. LUC 20.25E.065.G.2.a.v.(1) states that no greater than 40 percent of the Vegetation Conservation Area be impervious area, lawn, etc. This allowance may be too high. While access for water dependent uses and water enjoyment use are appropriate, a 40 percent disturbance level will impair the ecological effectiveness of the Vegetation Conservation Area. The effect of the allowance for encroachments will need to be documented and analyzed in the Cumulative Impacts Analysis. It is probable that a lower allowance for disturbance in the Vegetated Conservation Area will be necessary. **57.12**

2. LUC 20.25E.065.G.2.b.i allows that no greater than 35 percent of the Vegetation Conservation Area in the Shoreline Canal environment be impervious area, lawn, etc. This allowance may be too high. While access for water dependent uses and water enjoyment use are appropriate, a 35 percent disturbance level will impair the ecological effectiveness of the Vegetation Conservation Area. The effect of the allowance for encroachments will need to be documented and analyzed in the Cumulative Impacts Analysis. It is probable that a lower allowance for disturbance in the Vegetated Conservation Area will be necessary. **57.13**

3. The vegetation conservation section at LUC 20.25E.060.K needs stronger planting requirements. There need to be clear vegetation standards for new development. This should include a requirement for planting native vegetation including trees. **57.14**

4. The SMP contains LUC 20.25E.E.3.b.iii - Setback Reduction Menu options. Many of these options are similar to setback reduction options in the Kirkland SMP except that the setback **57.15**

reductions in the Bellevue SMP are considerably larger than Kirkland. The setback reductions proposed in the Bellevue SMP range from 60 percent larger to 5 times the size of the comparable setback reductions in the Kirkland SMP. The Cumulative Impacts Analysis should look at the effect of the potential setback reductions.

5. LUC 20.25E.065.G.2.a.v.(4). The Cumulative Impacts Analysis will need to analyze the Vegetation Conservation Area approach in detail in order to determine whether it will achieve no net loss of ecological function. **57.16**

6. LUC 20.25E.070.C.3.f - Accessory Uses. Accessory structures should not be located within the vegetation conservation Area of the shoreline setback or shoreline buffers. **57.17**

7. LUC 20.25E.065.C. From reading the SMP, it is unclear what the Phantom Lake buffers are. This can be addressed by clearly incorporating the CAO and including a provision that establishes a buffer for Phantom Lake. This buffer should be the same buffer as required wetlands presently associated with Phantom Lake. **57.18**

8. Measurement of Shoreline Buffers and Setbacks

LUC 20.25E.065.E.2.b provides for measuring buffers and setbacks from the specific elevation of 31.8 NAVG 88 on Lake Sammamish. We acknowledge that this proposal is based on the Lake Sammamish Ordinary High Water Mark Study. Also included in this section should be language to require that the setback or buffer be based on the OHWM if there is documented reason to believe that the established elevation of 31.8 NAVG 88 is not accurate. **57.19**

C. Piers and Docks

1. LUC 20.25E.065.I.4 - Standards for Piers and Docks **57.20**

Area limits will likely need to be placed on new docks and piers. Based on a review of applicable science, the United States Army Corps of Engineers developed a standard for over-water coverage to be 480 square feet. The current proposal will allow for a 350 square foot platform on Lake Washington with a 4 foot walkway extending to a depth of 9 feet. Should a walkway need to be greater than 32.5 feet in length, the pier area could exceed the applicable guidance. The Bellevue standards would allow for greater over-water coverage then prescribed in the Corps standards. In order to pursue the approach, Bellevue will need to clearly show that large piers do not have an adverse effect on shoreline functions. The concern is that such a showing may not be possible.

2. Dock Lighting, LUC 20.25E.065.I.3.b. Light from artificial lighting must be visible or spill to or at any point below the deck surface. Artificial lighting in the nearshore area can allow for increased predation on juvenile salmon. **57.21**

3. LUC 20.25E.065.I.4, Note 3 – A walkway can be increased above the 4 foot width specified in the standards if the area of the platform is reduced at a 2:1 ratio. A walkway of greater than 4 **57.22**

feet in width is not supportable without a case specific demonstration of need such as access to address an Americans With disability Act concern. In such cases the walkway should be the minimum necessary to support the identified need and include mitigation.

4. LUC 20.25E.065.I.4, Note 4 allows for additional platform size if the walkway is smaller than 4 foot in width. While the concept is reasonable, it must be considered in the context of the discussion of pier and dock area limits, above. **57.23**

5. LUC 20.25E.065.I.4, Note 6 allows for additional fingers to extend from the platform without considerable of the overall area of the pier or dock. The area of the fingers must be counted as part of the overall allowed area of a pier or dock. **57.24**

6. Piers and docks should be restricted to the minimum size necessary to accomplish their water-dependent purpose as well as meet the size standards in the SMP regulations. See WAC 173-26-211(5)(c)(ii)(B). this should be clearly articulated in the SMP policies and regulations. **57.25**

7. Per WAC 173-26-231(3)(b), residential development of two or more lots shall be required to use a joint use pier or dock unless such is demonstrated to be infeasible. **57.26**

8. LUC 20.25E.070.D.h.i Commercial Float Plane Terminal. **57.27**

   Helipads should not be located in shoreline jurisdiction.

9. 20.25E.080.E.4.c. If the City wishes to allow live-aboards, then specific standards should be developed for marinas that accommodate live-aboards. At a minimum, these should include: **57.28**

   a. They are for residential use only;

   b. The marina shall provide shower and toilet facilities on land;

   c. There shall be no sewage discharges to the water;

   Such standards may also consider the following:

   d. Live-aboards shall not exceed ten percent of the total slips in the marina; and **57.29**

   e. The vessels shall be owner-occupied;

10. Non-residential moorage should be the minimum necessary to accomplish its purpose. **57.30**

D. Transportation Section - LUC 20.25E.065.D

1. We note that light rail is listed as TDB. This section needs to address light rail. It is assumed that light rail is treated separately from railroads in the SMP. **57.31**

2. An additional regulation should state that transportation facilities crossing the shoreline must not result in net loss of shoreline ecological function or adversely impact existing water dependent uses. **57.32**

3. Where are parking standards located in the SMP? **57.33**

4. LUC 20.25E.070.D.3.c New highways and roads need to be located outside of shoreline jurisdiction unless it is infeasible to do so or a shoreline location is necessary for the road to serve it intended function. **57.34**

5. The SMP should include clear policy and regulatory guidance found in WAC 173-26-241(3)(k) to: **57.35**

> *Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.*

E. Shoreline Uses Described **57.36**

LUC 20.25E.020.D.3 states that if a use is not listed in the Land Use Classification in the Shoreline Use Charts contained in LUC 20.25E.030, then the use is prohibited. If an SMP does not address a specific use, then it is an unclassified use and automatically a shoreline conditional use.

F. Public Access LUC 20.25E.060.I **57.37**

The SMP needs to include public access requirements for marinas, water-enjoyment, water-related, and nonwater-dependent uses as well as residential development and public projects. See WAC 173-26-221(4). It is noted that public access requirements are included for transportation, certain utility, and recreation projects in LUC 20.25E.060I.2. It may be helpful to define recreation use projects in this section.

G. Shoreline Stabilization

2. LUC 20.25E.080.F.4.i (Expansion of Shoreline Jurisdiction from Shift in the ordinary High Water mark) should include standards of RCW 90.58.580. **57.38**

3. New development should be designed to avoid the need for shoreline stabilization per WAC 173-26-231(3)(a)(iii)(A). **57.39**

4. There is a need for a requirement in the SMP for a geotechnical analysis as discussed in WAC 173-26-231(3)(a) and defined at WAC 173-26-020(16). **57.40**

5. Shoreline stabilization must achieve non net loss of ecological function per WAC 173-26-231(3)(a)(iii)(B)(I). **57.41**

6. For shoreline stabilization to be approved, the geotechnical report must document the need for any shoreline stabilization consistent with WAC 173-26-231(3)(a)(iii)(D) including the specified time periods (generally 3 years) for the erosion threat. **57.42**

H. Comments of Patrick McGraner, Wetland Specialist

1. Definitions for OHWM and wetlands were found to be consistent with those found in RCW 90.58.030. The draft uses the term "significant trees" in several places within the update. I had to search other section of city code to find this definition (LUC 20.50.010). The city might wish to consider additional definitions in LUC 20.25E.280. While not specific to the SMP, both the significant tree and wetlands definitions might be considered to be added. **57.43**

2. 20.25H.035A, 20.25H.095B.4, and 20.25H.095C.1. Regulatory exemption of small wetlands is not supported by the scientific literature. The SMP draft needs to demonstrate no net loss of ecological function within the shoreline jurisdiction. Mitigation, even for the smallest of wetlands within the shoreline jurisdiction is required. The City could consider requiring compensatory mitigation for the loss of small wetlands through an alternative mitigation strategy, such as in-lieu fees or mitigation banking. See Laura Casey letter to the City of Bellevue dated November 7, 2005. **57.44**

3. 20.25H.220.D requires only a minimum of 5 years of monitoring for compensatory mitigation. Monitoring for a minimum of 10 years is required to assure no net loss of environmental functions when woody vegetation is used in compensatory mitigation. See Laura Casey letter to the City of Bellevue dated November 7, 2005. **57.45**

4. 20.25H.105.D does not provide guidance with regards to mitigation ratios for replacement of lost functions when using enhancement. The city should consult Table 8C-11 found in *Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands – FINAL, April 2005 (Publication #05-06-008)* for the enhancement ratios as based on the best available science. The city needs to adopt mitigation ratios for enhancement to demonstrate or assure no net loss of ecological functions within the shoreline jurisdiction. **57.46**

5. The draft proposes to allow substitutions for native vegetation within the 25 ft. Vegetation Conservation Area in LUC 20.25E.065G(2)(iv) within the Shoreline Residential Environment. The Department of Ecology is not aware of any scientific studies to justify substitutions of non-native species for native ones. The city needs to provide Ecology with the scientific literature to support this approach to include a detailed table of specific plants to be substituted for specific native species. **57.47**

If there are any questions regarding these comments, please contact me at (425) 649-4260 or david.radabaugh@ecy.wa.gov.

Sincerely,

David Radabaugh
Environmental Planner

Carol Helland, City of Bellevue
Michael Paine, City of Bellevue
Geoff Tallent, Department of Ecology
Patrick McGraner, Department of Ecology

David Radabaugh-DOE	He acknowledged the work done by the staff and Commission as well as the work done by the citizens. Much that is in the draft Shoreline Master Program works well and covers the issues that must be addressed. With regard to vegetation conservation, he acknowledged the framework of replacing the existing critical areas ordinance buffer with a setback and vegetation conservation area. The Department of Ecology can support the concept; it has been used in other jurisdictions and involves the use of the shoreline as well as the conservation of vegetation and ecological functions. Within the vegetation conservation area for Lake Washington and Lake Sammamish, the 25-foot area, there is a provision for the shoreline residential areas that 40 percent of the area does not need to be part of the revegetation effort. It is perfectly understandable that areas are needed for access to the shoreline and to piers and docks for recreation along the shoreline, but allowing up to 40 percent of the shoreline to not be vegetated may not be adequate. Within the Shoreline Master Program there is a provision for reducing the 50-foot setback, but the reduction revisions are substantially larger than those included in the Kirkland Shoreline Master Program; those provisions will need to be carefully reviewed. The pier and dock standards also need to be carefully reviewed.

Jerry Baruffi,	pointed out that the previous speaker had called for reducing the 40 percent allowed to be non-vegetated but had not submitted any scientific evidence supporting the statement. He said he has been a lakeshore resident since 1961 and currently lives on the shores of Meydenbauer Bay. The stormwater discharge into Meydenbauer Bay is silting up the bay. Chemicals have been put into the bay to reduce the milfoil problem, but that will need to be done again next year. The real problem is silt is coming down the stream from upland buildup and is filling up the bay; no one is addressing that issue. The boat tour given early in the update process did not loop into the south end of Meydenbauer Bay; if it had, it would have run aground because of the silt buildup. The properties surrounding the bay are residential and the ideas put forth by the staff have been to change the nature of the bay. The notion of including 14 transient moorage slips will create a large turnover of boats at all hours of the day and night. In Portage Bay near the University of Washington there is a boat storage facility that can hold up to 580 boats; many of those boats will be going into Meydenbauer Bay so their owners can visit the restaurants, and that will totally change the nature of Meydenbauer Bay from a quiet residential bay to a commercial character. The shoreline owners would like to know why the consultants hired by the city were chosen and why they came up with the most restrictive rules. It is time for the people who live on the bay to open their wallets to hire different consultants to voice a difference of opinion.	**58.1** **58.2** **58.3**

L

Cheryl Eberling age 29

I originally moved to Phantom Lake in the summer of 1967. My family and I loved this area so much that more than 30 years ago my former husband and I purchased three more small lots neighboring our home. One of the lots is on the lake and two are located directly back from that lot.

At first we used part of our property (on the lake front lot to grow a garden, while the kids built forts, played hide and seek and did other kid stuff on the property.

Originally, we had hoped to develop the 3 lots, or, to possibly build a retirement home for ourselves on one of them or homes for some of our children.. I have had more than one offer from others hoping to purchase all of this property from me.

Once, when I refused to sell it to a man hoping to build a beautiful home for himself, he told me to name my price. I still declined his offer.

Over the years I have watched with anguish and dismay as City decisions and regulations have flooded my land, destroyed my property value and even regulated it so that I cannot use my own property.

Let's start with the property my home is located on. In 1977, we built a new structure on approximately the same site that the original home we moved into 44 years ago was located on. I am almost 73 years old, and let me tell you my house has not moved!

However, since the City started using Phantom Lake as a catch basin and not letting the water drain out as it should, **my home now sometimes sits within five feet from the edge of the lake**! In addition, at its current "regular" much higher water level(s), I have lost EASILY, up to four feet, and VERY LIKELY even more than that of my property all along the edge of the water! **59.1**

Instead of helping me protect my property and the health of the lake, the City keeps telling me I can or I can't, or is it I have to mow my weeds, move my rocks or plant trees – oh, and which weeds am I fined if I don't pull out, or is the fine if I do pull them out with something other than a hand tool? **59.2**

Or, was I supposed to plant something with a hand tool? Now, and hopefully I am confused about this one, the City says that I need to have a set back of 110 feet or 200 feet with a 20 foot buffer. **59.3**

Okay, so with that and the location of my bedroom, I'm pretty sure I'm sleeping in the middle of the designated buffer zone!

I have heard something about the buffer zones and setbacks not applying quite the same in all cases, and possibly not in the case of my home as it stands now.

But, what happens if I want to make some changes to how my home is currently built at some point in the future?

Maybe a little addition for when some of my 35 grandchildren come to visit or something such as this type of an improvement? With the shape of my house and the way that it sits on my property, the city allowed addition would not work for my house.

It's bad enough when we are just talking about the property where my home sits, but what about the other three lots? The water level has risen so much higher, that where we used to garden is now a **swamp**!

59.4

Although I'm absolutely certain that that lot has not moved either, its status was changed by the City regulations to "unbuildable" in a previous round of regulation! The other two lots will probably be rendered unbuildable too by this additional, unwarranted and unauthorized City regulation. high water mark city flooding

I love my home and my lots and absolutely relished the possible option of building a new, smaller home on one of them for my retirement or homes for some of my children..

I have paid taxes on the lots at a buildable value for over 30 years and have done my best to maintain them. Now here I am at age 73 facing the prospect of **losing the entire value of my property**, after all of this time, and, of suddenly taking a major hit to the assets I was planning on for my retirement. **59.5**

I am at the mercy of the City and the property management whims that continue to hit them.

I am trembling in my boots at the prospect of additional, complicated, confusing restrictions being mandated to me by the City.

How am I supposed to figure them out without hiring some expensive professional to do it for me, and how am I supposed to comply without losing the complete use and value of my property?

As an alternative to this incredible nightmare, I whole heartedly support WSSA's Sensible Plan. **59.6**

Cheryl Eberling	has lived in her home on one lot on the east side of Phantom Lake since 1967, and subsequently purchased three additional lots, one of which is a lakefront property. She said the lakefront property was first used to grow a garden, and at the time the water in the lake was clear and was good for swimming. That is no longer the case: the water is polluted with a variety of chemicals and pollutants. Over the years the property owners have watched with dismay as city decisions have resulted in the lands around the lake being flooded and property values diminished. In 1977 a new structure was constructed on the site of the new home; it is still there, however it now is sometimes within five feet of the edge of the lake. Four feet of the property has disappeared into the lake. The city says the weeds must be mowed and picked up with a certain size hand tool; certain weeds must be pulled out. Now the proposal is to increase the setback and buffer and to plant more vegetation. Conditions on the property would not even permit 500 square feet to be added to the house. The lakefront lot is completely swamped, and the other two vacant lots will be impacted by the new setback from the increased water level to the point of making any construction on the lots impossible. The city allows runoff from the street to flow onto one of the lots from where it flows to lakefront lot and then into the lake. There is a real possibility that the entire value of the properties will be lost. She indicated her wholehearted support for the Washington Sensible Shorelines Association sensible plan.	**59.7** **59.8** **59.9** **59.10**

May 25, 2011

Cherlynn Houston, daughter of Cheryl Eberting who resides on Phantom Lake at 1845 164th Ave SE Bellevue, WA 98008.

My family moved to Phantom Lake during the Summer of 1967. My mother raised eight children on the shores of this wonderful lake. I remember spending hours and hours swimming, and floating in the lake with my brothers and sisters, and with our friends. We also spent many a Summer night sleeping in the front yard or around the campfire.

Since that memorable time, the City of Bellevue seems to have decided Phantom Lake should become a holding pond for surrounding area office parks, old landfills, and new development. On top of adding this enormous water in-flow into the lake on a regular basis, they have also built devices to restrict the drainage of the lake. The average level of the lake is now **at least** two-three or more feet higher than historical levels. **60.1**

While this is certainly alarming just to hear about, I am here tonight to tell you how it effects my family personally. Let's start with the family fire pit that my siblings and I spent many hours in the past sitting around in the evenings and roasting marshmallows over. Even though my Mother still lives on the referenced property, unfortunately, my children and grandchildren are not able to sit around this same campfire because the site is now totally under water! They are also not able to sleep under the tall, decades old pine tree that was mature when my family moved to Phantom Lake 44 years ago either. They cannot do this, because the pine tree recently fell over due to the ongoing higher level of the lake which continues to creep closer and closer to my Mother's home and to overtake her entire property! When we were young, that tree was well away from the edge of the water. Yesterday, when my sister looked at the mark in the grass from the hole left where the tree used to stand, it was merely seven from the water's edge! Previously it was easily 10 – 12 feet away from the edge of the water. I am VERY concerned that the weeping willow tree will be the next to go, followed by the old pear tree, and then the fir tree. When the pine tree fell, the land was so saturated by the high lake water level that the hole left by its roots stayed filled with water for many **months**. Now, all that remains is much less shoreline for the remaining trees and other foliage!

What I would like to know, is, why the City is trying to impose additional regulations that affect where my 73 year old **60.2** mother can and cannot plant landscaping or build a patio or how she is allowed to fix her dock? Why can't she at least **60.3** put in a reasonable bulkhead to try and protect what is left of her fast eroding shoreline from the unnaturally high water levels of the lake? Why do they insist on dictating what foliage we must provide, while it is their measures which are causing the loss of the far more important, slow growing, almost impossible to replace, large trees around the lake? The **60.4** regulations and actions the City has imposed in the past upon my family and all those who live around this beautiful lake **have caused and continue to cause serious damage to the lake and to our property.** I have a hard time believing their plans to force setbacks and to take away bulk heads will somehow address the real threats to Phantom Lake – such as **60.5** unnaturally high water levels, and run-off contamination. I would also like verification of the qualifications of the experts advising these regulations, and to know if they have actually been implemented with significant positive effect in other areas. If these additional regulations end up causing more harm than good (which they are currently in the process of doing), it would not be the first time. We on Phantom Lake remember this whenever we look at the new algae problem we have on our lake, a problem we never had before an expert convinced the City what the lake needed was an aerator. I ask you to consider if any of these folks have actually lived on and own any property on Phantom Lake and seen firsthand the terrible impact their regulations have caused us?

Washington Sensible Shorelines Association has looked thoroughly into these issues and has come up with an excellent Sensible plan which I support instead of the City of Bellevue's plan. **60.6**

Cherlynn Houston,	Ms. Ebertine's oldest daughter and has lived in Bellevue for 44 years. She said she can remember spending many hours swimming and floating in the lake with siblings and friends, and sleeping in the front yard or around a campfire. Since that time, the city seems to have determined that Phantom Lake should serve as a holding pond for surrounding area office parks, old landfills and new developments. On top of adding an enormous water inflow on a regular basis, the city has also built devices to restrict the drainage of the lake. The average level of the lake is at least two feet higher than its historic levels. The fire pit on the waterfront property is totally under water. No one is able to sleep under the decades old pine tree because the tree recently fell over due to the high water levels; the tree used to be well away from the edge of the water. The concern is that the weeping willow tree will be the next to go, followed by the old pear tree and then the fir tree. When the pine tree fell the ground was so saturated that the hole it left in the ground was filled with water for many months. All that remains is far less shoreline for the remaining trees and other foliage. The city should allow for the construction of a reasonable bulkhead to protect what is left of the fast-eroding shoreline from the unnaturally high lake water level. It is unknown why the city should dictate what foliage must be provided by homeowners when it is the city's actions that have resulted in the loss of the more important and slower growing large trees around the lake. The regulations and actions imposed by the city in the past have caused and continue to cause serious damage to the lake and the lakeshore properties. It is difficult to believe that the planned setbacks and removal of bulkheads will address the real threats to the lake, such as the unnaturally high water level and contaminated runoff flowing into the lake. It would be good to know if the recommendations for the shorelines have been implemented in other areas with positive effects. Experts have given bad advice in the past; the current algae problem did not exist before an expert convinced the city that the lake needed an aerator. She voiced support for the Washington Sensible Shorelines Association sensible plan. Recently a dog playing in the yard of her mother's home was attacked by a coyote, and that has increased concerns for the grandchildren and great grandchildren who visit the property, especially if additional vegetation must be planted.	**60.7** **60.8** **60.9** **60.10** **60.11** **60.12**

Mike Anson	Became a citizen of the United States in November 2010. He said he made the choice voluntarily in part due to his belief in the government of the country. The Commission is part of that government and as such as a responsibility to the people. From what has been said it can be concluded that the Commission is either party to or is acting as a bulldozer not listening to fact, reason, or the will of the people. A democracy cannot be run if elected officials do not listen to those who elected them. The Commission has the responsibility to do the right thing.	**61.1**

Lt. Col. Jeff Hancock	Thanked the Commission for its service to the community, and the staff for the work done in creating the draft Shoreline Master Program. He said he hoped everyone would be open to the notion of making changes to the draft in light of what the public has said. He pointed out that by adopting a new ordinary high water mark, many structures that were measured against the previous ordinary high water mark may become nonconforming. Many of those structures are already facing erosion issues. If a new and higher ordinary high water mark is to be adopted, the citizens who have bulkheads protecting their properties should be allowed to keep and maintain them, and even increase their height, without onerous restrictions.	**62.1** **62.2**

Planning Commission:

There is NO WAY property owners should have to read and understand 350 pages of regulation to determine what we can and can not do on our property! Even if I agreed with the content – which I do not – demanding every resident spend a week reading a 350 page phone book of obtuse legalese is prima facie evidence of an unreasonable amount of regulation of homeowner properties. This guarantees we will need specialists to interpret the code, and the city planners can battle back with contradicting elements from somewhere else in the code. The city planners who created this are not asking you to read their 350 pages of regulation, but instead are distributing pictures and examples BECAUSE their regulations are too complex for debate, and BECAUSE those who vote do not have the week(s) to read 350 pages. They are making this an all or nothing prospect, because by turning this into a comic book, we are not even examining what language govern's what element of the pictures. If they can describe the regulation in 19 pictures, then do so, and get rid of the 350 pages. The Washington Sensible Shorelines Alliance has proposed a 28 page alternative which provides all of the guidance and regulation required with far greater clarity. Read both and decide which is better law for the citizens of Bellevue. **63.1**

In this time of government cutbacks, why are these planners paid to create 350 pages of regulation, and ensuring a bureaucracy to enforce it. We need to Just say NO! Require that regulations be reasonable! Whatever they are proposing demand that the regulations be cut down to under 30 pages (I know a 28 page version they could use). So that homeowners can understand it, the council members can read it, and the city can effectively enforce it.

Because the regulation is so completely unwieldy, they've given us pictures, and we are told these pictures represent what is in these unreadable regulations. The real issue is what's <u>not</u> in their pictures - as the city isn't voting on the pictures it is voting in 350 pages of gibberish and double talk that only the plannners and hired experts will have the right and expertise to interpret what it means. It is evident that if it requires 350 pages to describe these regulations, there is a lot more being restricted than what is in these 19 pictures.

So I CANNOT read, interpret, or even FIND the relevant parts of the written regulation which I disagree with instead I have to point to the pictures to show you that even here in their summary it is evident that these regulations are misconceived, not thought through, unclear, and will be either ignored or battled by your citizens in perpetuity. Because my time is limited let me give just 3 examples.

First, in their boatlift "picture #2 regulation" it says "Water depth at moorage at least 9' from OHWM". Most boat lifts on the lake are not in water this deep. If a lift must raise the boat another 3' (minimum) to be out of waves and water (particularly given the variable water levels over OHWM. We need a 12' boat lift on the shore side, and probably 16' + on the lake side. Given that the boats are under about 8' wide and the lift cradle is substantially narrower <4' (where the skids contact the hull), this is a very tall, narrow, top heavy (with boat) structure subject to cross-winds and waves. I don't think very many lifts on the lake would be compliant with having 16' arms. None of the lifts in my neighborhood would be "compliant" with this regulation. And at many parts of the lake where it is shallower (such as Bass **63.2**

Cove), you can't get to 9' deep water 150' from shore so, this basically bans all boat lifts for these property owners. This lack of awareness and technical competence of the staff pumping out this volume of regulation will result in unintended consequences, years of lawsuits, which all tax payers should object to.

Second, let's explore the natural bulkheads these "pictures" prescribe. The logs in the pictures may look natural, and they sure are heavy, but wood floats - it can't be a bulkhead to waters that may go over it – instead, when it is most needed in record high water, with 4' storm waves (as we have photographed) it becomes a battering ram in wave action, smashing our shore, docks, boats, homes at low elevation. The most dangerous thing we could have on the shore is a big heavy wide diameter log. No stakes will hold the lifting force that keeps the multi-tons houseboats on Lake Union floating. I have been told somewhere in this regulation, the city actually requires homeowners who comply with this proposed regulation are required to release the city from liability for any damage their required solution creates to the homeowner or others. **63.3**

Broken rock is another alternative proposed by "Picture 6", but a field of sloped Broken rock/boulders is very dangerous to climb over. Now that we have 5' water level swings due to the choked outflow, we need under the 3:1 to 1.5:1 (minimum) ratio to have an 8' - 15' field of rocks to scramble over. How would you pull a boat like a catamaran on or over that without destroying the hull? How many cut knees, twisted ankles, and broken legs come with that regulation?

Third, dock layout limitations - Given the narrow 4' beam of the dock in the pictures, how do you walk by a 3'-4' wide canoe or Kayak (let alone a 5' wide laser) on the dock (since the rock field bulkhead prevents us from pulling it up on the shore). How many kids or retired folks or visiting parents will fall in trying to navigate past an obstacle on the dock that we can now no longer pull up on shore? How can you launch a boat like a laser or canoe on your own if you can't pull it up on the dock (due to lack of space, or on the land due to the bulkhead rock field). **63.4**

The point in all three of these examples I have called out is that these 350 pages of regulation which we certainly don't understand even with the pictures, are BAD LAW – they have not been tested or thought through. If this were enacted, do you think we could later amend this phonebook to be a reasonable level – do regulations get shorter over time – NO, it will grow, and be interpreted and be amended, and fought, and there will be new case law, and elements will be unconstitutional or in conflict with of other state and national regulation. If this passes we are guaranteeing our children's children so much regulation that they will be tied up in legal battles so that no one will go through the permitting process. I already had to spend $2000 on permit experts just to put in a boatlift which the old (shorter) regulation clearly said I was entitled to – with 350 new pages of regulation, does anyone think this will not be much more next year? I feel these regulation were created to guarantee a lifetime of full employment for those who are expert in interpreting them. **63.5**

This book of regulation which I cannot comprehend is taking away my rights as a property owner. Where is the compensation to waterfront property owners for this transfer of property rights from individuals to the government? My right to even repair a few boards on a wood dock is now gone (to be **63.6**

replaced with Grating if the total boards replaced over 3 years adds up to 20 sq. ft. a 4'x5' patch) – because a regulator feels shading the lake is BAD. Now, if grating doesn't fit with my stringers these few loose boards may end up may costing me $50,000 as the whole dock may need to be reconfigured to be compliant. If I need flexibility and give up a 5' bulkhead I lose 15' of shoreline, and move OHWM closer to my home, advancing the 25' and 50' setbacks, and probably mandating that I plant trees to block my view in these areas – because another regulator feels shading is GOOD. If I am required by law to plant trees, why is King County killing the 200' tall 200 year old trees in the state park by allowing water levels to rise (and stay high) to the point where the roots suffocate? This is BAD, totally inconsistent science, embedded in regulations to voluminous to comprehend. This regulation before you is taking away my property and property rights, and I will fight this through the courts and the political process. Visualize the media spectacle of all the property owners before you printing up these 350 page phone books of regulation and marching to city hall, demanding why you have foisted up-on us regulations no one can understand, then burning these regulation books in effigy.

To the Bellevue City Planning Commission May 25, 2011

About three years ago in our neighborhood the City asked us to participate in the planning for the new Eastgate Park on the 29 acres purchased a few years before. The neighbors nearly unanimously voted to leave the property "as is" for a refuge for both wildlife and people from the urban hustle. The City responded that this was very attractive and valuable property, and was going to be developed for the use of **people**, not preserved for wildlife, and therefore we could choose amongst layouts for ball fields, parking lots, picnic areas, bathrooms, etc., but preserving it for wildlife was out of the question.

A couple of years before that an osprey nested in a light fixture above the stands at Bannerwood ball park. It was never considered that the park be shut down for her benefit, not even that the light be turned off and that section of the stands closed. The osprey nest was moved, which was apparently ok with her, and the use of the area by **people** first and foremost was acknowledged.

I would like to remind the Planning Commission that those of us who have Phantom Lake waterfront are **people, too**. We have invested most of our lives in these properties on the lake. Our children and grandchildren have spent countless hours in and on the lake. It is very attractive and valuable property to us, just as the Eastgate park property and Bannerwood are attractive and valuable to the baseball aficionados. **64.1**

I have been on the Lake for 45 years and spent thousands of hours planting and weeding and pruning and digging and fixing and then starting the cycle over again each season. During these hours I have been "up close and personal" with our wildlife in ways the staff could never understand from their desks in City Hall. I have observed our bats and rats and mice and moles, our voles and shrews and rabbits and raccoons. I have spent hours watching the herons fish off our dock and in the shallows of the lake. A few times they have brought a chick down to learn how to fish on our waterfront. The eagle uses the dock for a picnic table when a duck presents itself for a meal. In the frost and snow the otters use the lawn for a super slide – down the grass, over the bulkhead, back up and a rollicking game of tag. And in the summer the otters scratch their back and sunbathe on the dock in the evenings. The muskrat rambles back and forth in front of our beach.

I don't have a great many "native plants" in the garden, but I assure you that the wildlife is not put off by this. The birds flock by the dozens to the Himalayan dogwood berries in the late summer, the squirrels and raccoons play and feast in the Cedrus Deodor as the seeds from the cones are both delicious and nutritious. The small ducks strip the blueberries from the low-hanging branches with enthusiasm. Last week the deer was back to check out the vegetable garden since he really has a taste for the tip ends of the tomato plants and he actually likes zucchini! The occasional apple rounds out his feast. The rabbits graze on whatever they please, and of course the coyotes graze on the rabbits. My yard provides food and shelter for a wonderful variety of animals. Those animals

may also like willow thickets, but they ~~do~~ certainly do not shun a more "exotic" palate. I can't think of any major animal species that lived on the shores of Phantom Lake in the past that is not represented here now, except bears. And I am good with not having bears.

The animal species that are having trouble are the fish. And no amount of willow thicket is going to solve their problems. The lake is suffering from thousands of gallons of untreated or minimally treated storm water being funneled in to it after every rain. This upsets the chemistry of the lake and causes major flooding of our shore front. This is a problem that the City, **and only the City**, can address. With the additional development in Eastgate, this problem will only get worse. **64.2**

Somehow there is always a way to get the additional water into the Lake, but when we plead for help in getting the water on through and out the drainage creek, we are stonewalled by the staff. The lakefront owners feel the City has demonstrated a lack of good will on this issue, and it poisons the relationship between us and generates an extreme lack of trust. The feeling is that no one with the City really cares what happens on the Lake. When the staff presented the idea of a dense barrier of willow thicket depriving us of most of the beauty and utility of our beach does not feel like it comes from a desire to improve, but is merely one more attack by an uncaring bureaucracy.

It appears that the "willow thicket on every lot front" idea has been at least partly shelved. Good on you! If there is an honest plan developed to address this overarching storm water issue, and that plan is implemented to some noticeable degree, it will go a long way to restoring trust and cooperation from the lakefront owners.

Until then, we ask that the Commission remember that **we are people** too. Our shorefront is important to us. We do not want it confiscated in an ill conceived attempt to return to the 1850s. I will enthusiastically cooperate with a detailed, documented and proven plan to help our lake front community of people, plants and animals. I will fight furiously against some ill conceived, generic, "willow thicket native plant" nonsense. **64.3**
Let's be friends – it will work better for all of us!

Mary Clarke
16280 SE 24th Street
Bellevue, Wa
425 466 7388
Madaaks@aol.com

Members of the Planning Commission, City of Bellevue

May 25, 2011

I'm going to talk briefly about the Phantom Lake water level.

In 1967 I built a bulkhead on my property. During the summer months there was dry land between the bulkhead and the lake. In the winter months the lake level was at the top of the bulkhead, about a 21 inch increase in lake level. This was the norm over the next 20 or 30 years.

Sometime in the 1970s there was an unusually high rainfall and the lake was several inches above the bulkhead. My neighbor and I, along with wives and kids, went to the lake outlet and found the weir, which controlled water level, underwater. Beyond the weir was a cyclone fence covered with debris and this was impeding the flow of water in the outlet. We cleaned the fence, removed debris, old tires and rocks, etc. Folks living along the outlet joined our work party. By the next morning the lake level dropped at least two inches and within several days was back to normal depth.

65.1

Now the lake level, during the summer, is 12 inches deep at the bulkhead instead of zero. And during the winter months it is 14 inches above the bulkhead for a total depth of 34 to 36 inches instead of a total depth of 21 inches.

I don't know if the weir I saw in the 1992 is still there, but if so it is probably underwater. About 100 yards or so from where the old weir was there is a concrete dam in the outlet with some makeshift removable boards on top. The water at the dam is several feet deep. That depth would have made it impossible for me to work in the outlet during that cold December day 40 years ago. That dam is keeping the lake at the high level we are seeing today. Since the City is using a 50 foot setback from the ordinary high water mark, then the higher the water mark the more land the city takes from the property owners. This appears to be a re-run of the 1860 railroad barons' land grab. Before anything is done for SMP I want you to remove the dam from the lake outlet and use a properly designed weir to establish the traditional lake level of the 1960s.

David Clarke
16280 SE 24th Street
Bellevue, WA

425 746 7706
Madaaks@aol.com

My name is Cherie Zebley, and my family moved to Phantom Lake 44 years ago, the summer before I started kindergarten.

We had an incident about three weeks ago that I would like to relate to the board. It illustrates one way the City of Bellevue's regulations impact families around Phantom Lake. My sister and I debated over which of us should tell the story – me because it was my dog, or my sister because she has two beautiful 1 and 3 1/2 year old grand daughters who love to visit our mother on the lake. It could realistically have been one of them instead of my dog which is way more frightening, however, I was the one who was there so I will tell it.

About three weeks ago, I was working at our mother's home. I had brought my dog, Zoey, a maltase- shih tzu mix to work with me. After awhile Zoey, wanted to go outside so I let her out on the lake side of my mother's house. She ran around the yard for a bit and then I happen to notice as she headed for the sliding glass door to be let back in. However, just as I was going to get up to let her in she went running off back towards the lake. I thought maybe she wanted to run around a little bit more. A moment later I heard a ruckus outside. I look up and saw Zoey. She was just 5 feet from the door and was fighting for her life. She was being attacked by a coyote right there in front of me! I raced for the door and she managed to hold it off until I could get there! This was very traumatic for both me and for Zoey, but what if it had been my sister's granddaughters, little Jane or Lucy, who happened to go outside for a minute? They can't run, and they doesn't have teeth to fight back with or even fur to help hold off this predator until help could arrive . This attack on Zoey attack happened around 2:00 in the afternoon, in full daylight and within five feet of the door. **66.1**

Now, I live outside of Redmond in a fairly rural area and to be honest coyotes can be a problem. I have seen coyotes in my yard. But that is just the point. I can see them if they are in my yard. At my mom's house, when I let Zoey out I didn't see any Coyotes. I let Zoey out the sliding glass door which is next to another window so I could see outside, but sill she was attacked within feet of the house. In order to do this, that coyote had to be hiding in the tall plants the City requires my mother let grow along her property. Some of the other neighbors have begun losing their cats and dogs to coyotes also. And I hate to say it, but Zoey is a slow learner. About a week after the attack, my mother took her with her to walk just to the mailbox. Again it was in the middle of the day, but there was a coyote strolling across the cul de sac where the mailbox is. Zoey took off after the coyote, and my mother was barely able to stop her in time. Needless to say, my poor 73 year old mother was really shaken up again.

In the years my family has lived on this lake before City Regulation began I don't remember there being coyotes there. What I want to know is why the City is even considering increasing regulations that will force my mother and other families who live around our lake to turn our yards into even better havens than the ones the city has already mandated we provide for coyotes who kill our pets, and cause us to worry about our children if they happen to step just 5 feet outside of our doors?

I have looked over the regulations proposed by the City of Bellevue, and also over the alternative offered by Washington Sensible Shoreline. I strongly support the plan put forth by Washington Sensible Shoreline. **66.2**

I Support the
Sensible Shorelines
Plan.

67.1

Robert Witouf

Robert Witouf
2828 W Lake Sammamish SE
Bellevue WA 98008

COMMENT FORM

*Phantom — from the SMP. * Separate one for us!

As a Phantom Lake resident, I feel strongly about maintaining my rights as a homeowner, and do want to keep my property safe and sensible — We do not want to wait for permission to make needed repairs--- I have small children and my first priority is keeping them safe. 68.1 68.2

We are careful and attentive to protecting our environment. Our family is concerned that adding plantings would decrease our view to our children's lakefront activities. We support the WASA proposals, and are concerned about the new SMP regulations affecting our childrens' safety. 68.3

* Please EXEMPT Phantom Lake from the SMP. Our lake has different needs — We have no salmon, no boats. 68.4

Contact Information

Name: Ilana Long

Address: 16170 SE 16th Street
Bellevue, WA 98008

COMMENT FORM

Get the staff under control!

Staff thinks they are running the show, when the commision and the council should be along with citizen input.

Staff works for YOU not the other way around.

Staff in the City of Bellevue have been out of control for years. Time to change that. 68.5

Contact Information

Name:

Address:

Comment #68

Draft SMP Comment #68 - Ilana Long/Steve Blatt
After Hearing Written Comments

From: Helland, Carol
Sent: Thursday, May 26, 2011 11:02 AM
To: Shorelines
Cc: Bedwell, Heidi; Inghram, Paul
Subject: FW: Request to Exempt Phantom Lake from New SMP Regulations

From: Ilana Long [mailto:ilanalong@hotmail.com]
Sent: Wednesday, May 25, 2011 8:51 PM
To: Helland, Carol
Cc: Brian Parks; Steve Blatt
Subject: Request to Exempt Phantom Lake from New SMP Regulations

To: Carol Helland
Land Use Director
City of Bellevue

I attended the SMP hearing this evening, but was unable to share my testimony, as so many people were waiting to speak! I agree with the many speakers who were concerned that the SMP would infringe on their rights as homeowners. **68.6**

Mostly, I would like to agree with one of the Phantom Lake residents who spoke and stated that Phantom Lake should be exempt from the new SMP regulations. We do not have salmon in the lake, we are not a lake with motorized boats, and many of our lake's features are so different from that of the other two Bellevue lakes that we should have our own separate Phantom Lake SMPs. Additionally, if we have to plant deciduous trees on our properties, ultimately, more algae would be produced by the lake, and we already have plenty of algae. **68.7**

Additionally, on another note, Phantom Lake needs it's own dock regulations and permit process. Many of the reasons behind the current process apply to the other lakes but not to us. Our docks are recreational; for swimming only. We do not moor boats, nor do we have motorized boats. **68.8**

My children and I swim in this lake every summer. I want to preserve its beauty and keep it unpolluted, and am much more concerned about how building and construction in Bellevue creates runoff into the lake. **68.9**

Our lake is small, but the residents here feel strongly about preserving our rights, as well as maintaining a safe and ecologically sound environment. **68.10**

Many thanks for your time and consideration.

Sincerely,
Ilana Long and Steve Blatt
16170 SE 16th St.

Comment #68

Bellevue,WA 98008
425-440-8880

Draft SMP Comment #68 - Ilana Long/Steve Blatt
After Hearing Written Comments

Comment #68

Draft SMP Comment #69 - Bob Bengford
After Hearing Written Comments

From: Bob Bengford [bbengford@comcast.net]
Sent: Wednesday, May 25, 2011 10:54 PM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **69.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **69.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **69.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **69.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Bob Bengford
11014 se 28th place,
BELLEVUE, WA 98004
4257650847

Comment #69

Draft SMP Comment #70 - Alice Evans
After Hearing Written Comments

From: Alice Evans [arbevans@earthlink.net]
Sent: Wednesday, May 25, 2011 11:03 PM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **70.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **70.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **70.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **70.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Alice Evans
2455 127th Ave. NE
Bellevue, WA 98005
425 885 3562

Comment #70

Draft SMP Comment #71 - Joan Lieberman-Brill
After Hearing Written Comments

From: Joan Lieberman-Brill [Joanlb@nwlink.com]
Sent: Wednesday, May 25, 2011 11:19 PM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **71.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **71.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **71.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **71.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Joan Lieberman-Brill
4618 144th PL SE
Bellevue, WA 98006
425-957-1138

Comment #71

Draft SMP Comment #72- Del Domke
After Hearing Written Comments

From: Del E. Domke [delyicious@comcast.net]
Sent: Thursday, May 26, 2011 3:40 PM
To: Paine, Michael
Subject: Environmental Safeguards a must in SMP update

Dear Mr. Paine

Overall, the Bellevue SMP has many good parts that we support. However, the City's proposed plan doesn't do nearly enough to comply with state requirements or to protect Lake Washington and its threatened salmon, steelhead, and bull trout populations.

- Gaps in the buffer system need to be plugged to protect the remaining intact vegetation within shoreline jurisdiction when possible, and specifying compensation when not. **72.1**
- Some incentives allow greater impacts by reducing setbacks, but don't actually improve shoreline conditions as compensation. These need to be eliminated. **72.2**
- Some state requirements to limit uses not needing to be near the water need to be included, including for institutional-type uses. **72.3**
- Some intense uses are allowed in Conservancy designated areas which are incompatible with shoreline functions, and should not be allowed. **72.4**

I support the protection and restoration of the city's shorelines by adopting a SMP with strong environmental safeguards. Please strengthen the SMP to ensure water quality, natural shoreline functions and the recovery of Lake Washington's threatened fish populations. **72.5**

Del E. Domke
16142 N.E. 15th. Street
Bellevue, WA 98008-2711

Comment #72

Draft SMP Comment #73 - Ben Gardner
After Hearing Written Comments

From: Ben Gardner [badham1813@yahoo.com]
Sent: Thursday, May 26, 2011 7:29 PM
To: Bedwell, Heidi
Subject: I support a strong SMP for Bellevue

Dear Ms. Bedwell

I support the protection and restoration of the city's shorelines by adopting a Shoreline Master Plan with strong environmental safeguards. Overall, the Bellevue SMP has many good parts that we support. However, the City's proposed plan doesn't do nearly enough to comply with state requirements or to protect Lake Washington and its threatened salmon, steelhead, and bull trout populations.

- Gaps in the buffer system need to be plugged to protect the remaining intact vegetation within shoreline jurisdiction when possible, and specifying compensation when not. **73.1**
- Some incentives allow greater impacts by reducing setbacks, but don't actually improve shoreline conditions as compensation. These need to be eliminated. **73.2**
- Some state requirements to limit uses not needing to be near the water need to be included, including for institutional-type uses. **73.3**
- Some intense uses are allowed in Conservancy designated areas which are incompatible with shoreline functions, and should not be allowed. **73.4**

Please strengthen the SMP to ensure water quality, natural shoreline functions and the recovery of Lake Washington's threatened fish populations.

Ben Gardner
15658 SE 9th st.
Bellevue, WA 98008

Comment #73

Draft SMP Comment #74- Mana Iluna
After Hearing Written Comments

From: Mana Iluna [manailuna1@msn.com]
Sent: Thursday, May 26, 2011 3:57 PM
To: Bedwell, Heidi
Subject: Environmental Safeguards a must in SMP update

Dear Ms. Bedwell

Overall, the Bellevue SMP has many good parts that we support. However, the City's proposed plan doesn't do nearly enough to comply with state requirements or to protect Lake Washington and its threatened salmon, steelhead, and bull trout populations.

- Gaps in the buffer system need to be plugged to protect the remaining intact vegetation within shoreline jurisdiction when possible, and specifying compensation when not. **74.1**
- Some incentives allow greater impacts by reducing setbacks, but don't actually improve shoreline conditions as compensation. These need to be eliminated. **74.2**
- Some state requirements to limit uses not needing to be near the water need to be included, including for institutional-type uses. **74.3**
- Some intense uses are allowed in Conservancy designated areas which are incompatible with shoreline functions, and should not be allowed. **74.4**

I support the protection and restoration of the city's shorelines by adopting a SMP with strong environmental safeguards. Please strengthen the SMP to ensure water quality, natural shoreline functions and the recovery of Lake Washington's threatened fish populations. **74.5**

Mana Iluna
4415 145th Ave. NE H-2
Bellevue, WA 9

Comment #74

Draft SMP Comment #75 - Marsha Watt
After Hearing Written Comments

From: Marsha Watt [sharonandmarsha@hotmail.com]
Sent: Thursday, May 26, 2011 11:13 AM
To: Paine, Michael
Subject: Adopt a Strong Shoreline Management Act!

I believe in a strong Bellevue Shorelines Master Program and support the recommendations of Futurewise and People for Puget Sound. Poorly planned growth is a threat to the sustainability of our natural resources and rural lands, and will continue to greatly impact our wildlife and their habitats if Bellevue's shoreline protections are inadequate.

First, I want to thank you for updating the SMP and including several provisions that will help protect our streams, lakes, and ecosystems.

But the SMP also fails in several other regards too. At a minimum, the following amendments should be made in order to meet state requirements:
* Plug gaps in the buffer system to protect the remaining intact vegetation within shoreline jurisdiction when possible, and, when not possible, specify necessary mitigation and compensation measures. **75.1**
* Eliminate the incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline conditions. **75.2**
* Eliminate in shoreline land uses that are not shoreline-dependent -- such as institutional-type uses. **75.3**
* Eliminate all intense uses in Conservancy areas that are incompatible with shoreline functions. **75.4**

With these changes, the City of Bellevue can protect its shorelines so future generations can enjoy the beauty and ecosystems of Lake Washington, Lake Sammamish, and all of our streams, rivers, and lakes and the fish and wildlife they support.

Sincerely,

Marsha Watt
12530 35th Ave N.E #A-102
Seattle, WA 98125
206 364-2876

Comment #75

Draft SMP Comment #76 - Sound Transit (Ellie Ziegler)
After Hearing Written Comments

From: Ziegler, Ellie [ellie.ziegler@soundtransit.org]
Sent: Thursday, May 26, 2011 10:28 AM
To: Paine, Michael
Subject: SMP letter from Sound Transit
Attachments: Bellevue SMP public hearing comment letter_052311.pdf

Hi Michael,

Good seeing you last night. Hope you got out of there before midnight. As promised, for your information attached is the letter we sent to Carol Helland regarding the draft SMP.

Take care,

Ellie Ziegler
Sound Transit - Environmental Planner
Office: (206) 398-5135
Cell: (206) 898-6628
email: ellie.ziegler@soundtransit.org

Comment #76

SOUNDTRANSIT

CHAIR
Aaron Reardon
Snohomish County Executive

VICE CHAIRS
Fred Butler
Issaquah Deputy Council President

Claudia Thomas
Lakewood Councilmember

BOARD MEMBERS
Claudia Balducci
Bellevue Councilmember

Richard Conlin
Seattle Council President

Dow Constantine
King County Executive

Dave Enslow
Sumner Mayor

Jake Fey
Tacoma Councilmember

Paula J. Hammond, P.E.
Washington State Secretary of Transportation

John Marchione
Redmond Mayor

Joe Marine
Mukilteo Mayor

Pat McCarthy
Pierce County Executive

Joe McDermott
King County Councilmember

Mike McGinn
Seattle Mayor

Julia Patterson
King County Councilmember

Larry Phillips
King County Councilmember

Paul Roberts
Everett Councilmember

Peter von Reichbauer
King County Councilmember

CHIEF EXECUTIVE OFFICER
Joni Earl

May 23, 2011

Ms. Carol Helland, Land Use Director
Development Services Department
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-90012
chelland@bellevuewa.gov

Re: Shoreline Master Program Update – Sound Transit

Dear Ms. Helland:

I write on behalf of Sound Transit regarding the current draft of the City of Bellevue's proposed update to the Shoreline Master Program ("SMP").

Since 2009, Sound Transit staff has been engaged with City staff to identify and address Sound Transit's concerns with the draft SMP. We have reviewed the current draft SMP and still have a number of questions and concerns, both substantive and procedural, that we would like to discuss with you and appropriate City staff.

Sound Transit proposes to construct and operate an extension of its existing light rail transit system to improve transportation connectivity between Seattle, Mercer Island, Bellevue and Redmond. This proposed East Link Light Rail Transit Project (East Link) would travel east across Lake Washington via Interstate 90 (I-90) to Mercer Island, Downtown Bellevue, and Bel-Red/Overlake, terminating initially at the Overlake Transit Center and ultimately in Downtown Redmond. Approximately 6 miles of the East Link project will be located within the City limits.

Sound Transit is in the process of completing state and federal environmental review for the East Link project and anticipates releasing a Final Environmental Impact Statement (EIS) this summer. Following issuance of the EIS, the Sound Transit Board will select the final alignment and the project to be built. All of the East Link alignment currently being considered would affect shoreline and critical areas under the City's jurisdiction including, most notably, the shorelines of Lake Washington (on the I-90 corridor) and the Mercer Slough area.

One of our goals in reviewing any SMP or local regulation is to work upfront with the local jurisdiction to assure that local plans and development regulations accommodate the light rail system, which is a regional essential

Central Puget Sound Regional Transit Authority • Union Station
401 S. Jackson St. • Seattle, WA 98104-2826 • Reception: (206) 398-5000 • FAX: (206) 398-5499 • www.soundtransit.org

public facility. As you know, local plans and regulations cannot preclude an essential public facility once the siting decision has been made by the regional authority, in this case the Sound Transit Board. Our intent is to work cooperatively with local jurisdictions to strike an appropriate balance between the unique rights of essential public facilities and the City's permitting authority, consistent with the Growth Management Act. **76.1** **76.2**

To that end, we would like to meet with you and appropriate City staff at your earliest convenience to discuss our concerns and questions. To arrange a meeting, you can call me at (206) 398-5135 or ellie.ziegler@soundtransit.org.

We look forward to continuing our work with you and City staff to develop a SMP and permit process that responds to our concerns and truly accommodates the East Link project in the City.

Sincerely,

Ellie Ziegler
Senior Environmental Planner

cc: Don Billen, Sound Transit
James Irish, Sound Transit
Steve Sheehy, Sound Transit

Draft SMP Comment #77 - Holly Haley
After Hearing Written Comments

From: Holly Haley [hollyannehaley@gmail.com]
Sent: Sunday, May 29, 2011 9:58 AM
To: Paine, Michael
Subject: Environmental Safeguards a must in SMP update

Dear Mr. Paine

Overall, the Bellevue SMP has many good parts that we support. However, the City's proposed plan doesn't do nearly enough to comply with state requirements or to protect Lake Washington and its threatened salmon, steelhead, and bull trout populations.

- Gaps in the buffer system need to be plugged to protect the remaining intact vegetation within shoreline jurisdiction when possible, and specifying compensation when not. **77.1**
- Some incentives allow greater impacts by reducing setbacks, but don't actually improve shoreline conditions as compensation. These need to be eliminated. **77.2**
- Some state requirements to limit uses not needing to be near the water need to be included, including for institutional-type uses. **77.3**
- Some intense uses are allowed in Conservancy designated areas which are incompatible with shoreline functions, and should not be allowed. **77.4**

I support the protection and restoration of the city's shorelines by adopting a SMP with strong environmental safeguards. Please strengthen the SMP to ensure water quality, natural shoreline functions and the recovery of Lake Washington's threatened fish populations. **77.5**

Holly Haley
14457 NE 16th Pl
Bellevue, WA 98007

Comment #77

Bedwell, Heidi

From: Inghram, Paul
Sent: Tuesday, May 31, 2011 12:55 PM
To: Bedwell, Heidi
Subject: FW: Shoreline Master Program COMMENTS please file

From: mcartano@aol.com [mailto:mcartano@aol.com]
Sent: Wednesday, May 25, 2011 11:27 PM
To: PlanningCommission
Subject: Shoreline Master Program COMMENTS please file

Planning Commission Members:

I attended this evening's (May 25, 2011) public hearing on the proposed Shoreline Master Program Update. The oral testimony was largely very cogent and targeted some key points. I have not attended previous hearings, but am a property owner on Lake Washington in Enatai, and the proposed SMP update would negatively impact our ability to maintain our property as well as its value. **78.1**

It is apparent to me that whatever entity is guiding/directing the Bellevue Planning Department efforts, be that state DOE or federal, on this update via its expectation/directive for regulation, should examine the results that the Bellevue planning staff has come up with to meet that directive. The department has obviously resorted to micro-management of property maintenance and/or development to "meet" whatever it perceives the next level is demanding. If not, and they are taking this tack on their own, then they need to be redirected. **78.2**

Lake Washington is already a developed lake. What, exactly, is the end-game for these regulations? It appears that some faction of the developers of this plan are aiming at reverting back to whatever natural state existed for these lakes a hundred or more years ago. Unfortunately their case is greatly weakened by testimony from scientists such as Professor Pauley.Looks like the science needs to be better nailed down. **78.3**

Why not look at the current state of Lake Washington and move forward? No one is aiming to deteriorate lake conditions. In that spirit, reasonable guidelines going into the future, not trying to revert to the past, would no doubt be palatable to property owners. **78.4**

Lastly it is particularly disturbing that a "grant deadline for funding" is thrown into this mix. Please know that most citizens know full well the implications there, and the the Planning Commission as well as the City Council members should be held accountable if this update is being pushed without sufficient examination or potential for revision because of the city getting dollars. **78.5**

Sincerely,

Maureen Cartano
Seattle

Draft SMP Comment #79 - Leslie Geller
After Hearing Written Comments

From: Leslie Geller [leslie_geller@hotmail.com]
Sent: Tuesday, May 31, 2011 11:46 AM
To: Bedwell, Heidi
Subject: Environmental Safeguards a must in SMP update

Dear Ms. Bedwell

Overall, the Bellevue SMP has many good parts that we support. However, the City's proposed plan doesn't do nearly enough to comply with state requirements or to protect Lake Washington and its threatened salmon, steelhead, and bull trout populations.

- Gaps in the buffer system need to be plugged to protect the remaining intact vegetation within shoreline jurisdiction when possible, and specifying compensation when not. **79.1**
- Some incentives allow greater impacts by reducing setbacks, but don't actually improve shoreline conditions as compensation. These need to be eliminated. **79.2**
- Some state requirements to limit uses not needing to be near the water need to be included, including for institutional-type uses. **79.3**
- Some intense uses are allowed in Conservancy designated areas which are incompatible with shoreline functions, and should not be allowed. **79.4**

I support the protection and restoration of the city's shorelines by adopting a SMP with strong environmental safeguards. Please strengthen the SMP to ensure water quality, natural shoreline functions and the recovery of Lake Washington's threatened fish populations. **79.5**

Leslie Geller
15102 SE 43rd St.
Bellevue, WA 98006

Comment #79

Draft SMP Comment #80 - Jane Alberts
After Hearing Written Comments

From: Jane Alberts [mistygreens@comcast.net]
Sent: Thursday, June 02, 2011 7:36 AM
To: Bedwell, Heidi
Subject: Environmental Safeguards a must in SMP update

Dear Ms. Bedwell

Overall, the Bellevue SMP has many good parts that we support. However, the City's proposed plan doesn't do nearly enough to comply with state requirements or to protect Lake Washington and its threatened salmon, steelhead, and bull trout populations.

- Gaps in the buffer system need to be plugged to protect the remaining intact vegetation within shoreline jurisdiction when possible, and specifying compensation when not. **80.1**
- Some incentives allow greater impacts by reducing setbacks, but don't actually improve shoreline conditions as compensation. These need to be eliminated. **80.2**
- Some state requirements to limit uses not needing to be near the water need to be included, including for institutional-type uses. **80.3**
- Some intense uses are allowed in Conservancy designated areas which are incompatible with shoreline functions, and should not be allowed. **80.4**

I support the protection and restoration of the city's shorelines by adopting a SMP with strong environmental safeguards. Please strengthen the SMP to ensure water quality, natural shoreline functions and the recovery of Lake Washington's threatened fish populations. **80.5**

Jane Alberts
12205 SE 54th St
Bellevue, WA 98006-2814

Comment #80

COMMENT FORM

WATER LEVEL CONTROL
LAKE SAMMAMISH

- HIGH WATER DAMAGES OUR PROPERTY, BULKHEADS AND DOCKS.
- PREVENTS US USING OUR BOATS ETC
"ITS JUNE" AND WE STILL CANNOT USE OUR BOAT/DOCK
- WE SHOULD NOT BE FULLY DEPENDANT ON A "CLEAN WIER" TO PROTECT OUR PROPERTY

81.1

- I BELIEVE IT'S TIME TO RESERCH AND EXAMINE AND BUILD A NEW AUTOMATIC WATER RELEASE SYSTEM THAT WOULD FULLY CONTROL OUR LAKE LEVEL.
ONE THAT IS NOT DEPENDANT ON A PERSONS APTITUDE AND REGULARITY TO CLEAN A WEIR.

Contact Information

Name: JACK HART & ROSE HART

Address: 476 W. LK. SAMMISH PKWY SE
BELLEVUE

COMMENT FORM

WEST LAKE SAMMAMISH PARKWAY SE
QUANTITY & CLEAR WATER + QUANTITY.
NO ONE SEEMS TO BE LOOKING AFTER CHARITY OF + QUANTITY OF WATER OF LAKE SAMMAMISH.
SPECIALLY LARGE PROJECTS, + BUILDERS POLUTION GOES ON ALL THE TIME HERE + NO ONE STOPS IT.
OVER 22 YRS WE HAVE SEEN IT HERE + OVER ACCROSS ALSO. IN THE EASTSIDE OF LK
THE LAKE TAKES CARE OF ITSELF. BUT BUILDER + RUN OFF ABUSE HAS TO BE STOPPED.
ALSO RUN OFF FROM UPPER BUILDING + HOMES SHLD. BE MONITORED. POLUTION STOPPED

81.2

Contact Information

Name: HARTS THANK YOU

Address:

MONITOR + STOP POLUTORS

Comment #81

COMMENT FORM

WEST LAKE SAMMAMISH PARKWAY SE.

ALL SURFACES OF THE ROAD ARE FULL OF POTHOLES

WE PAY OUR TAXES WHEN WILL BELLEVUE GIVE US GOOD ROADS. SURFACES ARE ROUGH, NOT DEFINED FALLING OFF. NOT LIT.

81.3 + POTHOLED

PLEASE AT LEAST FIX POT HOLES 22 YRS WITH NO NEW SURFACE OF ROAD

W. LAKE SAMM PARKWAY SE.

ITS DISGRACEFUL THAT BELLEVUE CITY. PAYS NO ATTN

THANKYOU

Contact Information

Name: R HART

Address: 476 W LK SAMM SE
BELLEVUE WA 98008

email: JAROSE2@COMCAST.NET

m10087.4/11.ind

A Special Note...

We thank Bellevue City Employees for being available + helpfull.

THE HARTS

Removal Request of SH-58 Regarding On-site Sewage Treatment Systems

There is great concern from some residents regarding SMP Draft Policy-18 SH-58. "Work with public health agencies to require repair or replacement of failing onsite septic systems within the shoreline area and require direct connection to the city's sewer system in accordance with the City's wastewater development regulations. Comment [DB110]: Bellevue specific approach and WAC 173-26-221(6"

The reason is several-fold, first most it specifies "failing" rather than systems "having failed" and this leaves a lot to discretion, as all systems are failing, per second law of thermodymamics, everything runs down eventually. On-site sewage treatment systems, or septics, were legally established and are very efficient in many cases, simply being smaller, individual treatment systems. They are not harmful when functioning.

Second, there are already Public Health Agency laws in place regarding this issue. If a system has in fact failed, King County already requires homeowner to connect to the city sewer system, when available. This policy SH-58 does not include "when available" which could require excessively costly infrastructure development for some, rather than simply repairing system issue. When a system has failed, compliance is mandatory. Concern is that a program to seek out "septic systems" and over scrutinize could exploit homeowners with grandfathered-in, functioning systems to be prematurely required to incur great expense.

As an example, one family is far from their waterfront with a functioning system having no signs of failure. Their neighbor who rebuilt was required to extend City sewerline through homeowner's property to do so. If Homeowners are forced prematurely to connect as well, they would have to pay a pro-rated portion of neighbors extension expenses, plus City hook-up fees, plus cost of running a line to the main and a pump & grinder system, and water hookup would also be required, as they are on a well. This has been estimated at $40,000-50,00, which could likely replace their child's college education.

Therefore we would like to ask that SH-58 be removed entirely. **82.1**