



MEMORANDUM

DATE: March 12, 2008

TO: Chair Robertson, Members of the Planning Commission

FROM: Michael Paine, Environmental Planning Manager, PCD
Heidi Bedwell, Associate Planner, PCD

SUBJECT: Shoreline Master Program Update—Bellevue File # 07-122342 AC

At the March 12 study session, staff will present a brief introduction to the Shoreline Master Program Update by highlighting major steps in a process that will stretch over more than two years, culminating in 2010 with final adoption of the Master Program by the Department of Ecology. For context we have added a brief history of the Shoreline Management Act of 1971 and its implementation by the City of Bellevue. We will also cover the 2003 Ecology guidelines and summarize the key components of the shoreline planning process. The memo concludes by introducing the public participation plan and outlining the next steps in the process.

I. Background

History of Shoreline Management Act: The Shoreline Management Act (SMA) was proposed by the legislature in response to a citizen initiative in 1971 and ratified by Washington voters in 1972. This proved a heady time for environmental legislation in the nation and Washington State, coming as it did on the heels of a national outpouring of environmental concern represented by Earth Day. At the federal level the National Environmental Policy Act (1969), the Clean Water Act (1970), the Coastal Zone Management Act (1972), and the Endangered Species Act (1973) followed in quick succession. Modeled on NEPA, SEPA was adopted at the state level in 1971, with the SMA coming close behind.

The SMA was a reaction to “uncoordinated and piecemeal development” of the state’s shorelines occurring without sufficient concern for the resource or the public interest. In response, the SMA developed three broad areas of policy: environmental protection, preferred shoreline use, and public trust. The implementation of these policy requirements, and the subsequent rules promulgated by the Department of Ecology, was left to local governments via jointly adopted Shoreline Master Programs (SMP). As a result, Ecology had a role in the adoption of Bellevue’s original SMP and holds approval authority over Bellevue’s updated version.

A primary focus of the SMA is to protect and restore the valuable and fragile natural resources the state's shorelines represent, while fostering those "reasonable and appropriate uses" that are dependent upon waterfront proximity or that enhance public access or increase recreational opportunities for public enjoyment of the shoreline. As a consequence, the SMA established a priority of uses that emphasized statewide over local interest, preservation of natural character over development, and long-term benefit over short-term gain, while seeking protection for the ecological functions of the shoreline. Lower in the hierarchy came public access, increased recreational opportunities and other forms of appropriate development. Specific development priority was given to single family residences, ports, shoreline recreational uses, improvements that facilitated public access, and commercial and industrial use for which location on the water was integral to their business operations.

In addition, the SMA reinvigorated the Public Trust Doctrine that holds that waters of the state are a public resource held in common by citizens broadly for the purposes of navigation, fishing, recreation, and similar uses and that private ownership of the underlying land could not nullify this trust.

Bellevue's Shoreline Master Program (SMP): Bellevue adopted its SMP in 1974 and it has existed essentially unchanged since. The SMP is contained in the Comprehensive Plan policies under the Shoreline Element and Part 20.25E of the Land Use Code. (For more detail, please see your binder.) Bellevue's plan addresses many of the key components of the SMA, with special emphasis on single family development and public (park) access. While the regulations contain standards that are generally protective, many key components are missing, including a focus on the biological and physical characteristics of the shoreline. This sort of analysis was supposed to result in a range of environmental designations or "environments," sensitive to the biological characteristics present on that section of shoreline, each with specific regulations to support these characteristics. The idea was that a mostly undeveloped shoreline with high biological benefit was to have policy and regulation attached to it that would mostly preserve and support those characteristics.

Also missing from the 1974 SMP is a range of land uses other than single family necessary to support both existing and future commercial uses—marinas and marine businesses are the most common example. These deficits, coupled with out-of-date science and a host of out-of-date references, triggers the need for a significant update, irrespective of the current state mandate.

Ecology 2003 Guidelines: In 1995, the SMA was substantially amended by the Regulatory Reform Act. The policy objective was to integrate the SMA, SEPA and Growth Management Act. As a consequence, the goals and policies of the SMA were to be considered part of the local government's comprehensive plan. In addition, Ecology was required to update master program guidelines every five years.

The effort to develop new guidelines was begun in earnest in 1996 and resulted in a complicated set of dual track guidelines (Path A and Path B) in 2000, one of which had been blessed by the federal services administering the Endangered Species Act. The new guidelines were almost immediately appealed and a split Shoreline Hearings Board invalidated the guidelines. A subsequent mediation process, convened by the State, resulted in new guidelines in 2003. Later legislation extended the time period for completing the required update and added state funding to support the effort.

The net effect of the new guidelines is to focus review and amendment of local master programs on using a process to identify, inventory and ensure meaningful understanding of the ecological functions provided by shorelines. Even more important is a focus on “no net loss” of ecological function necessary to sustain shoreline resources. This translates into a policy of avoidance first, mitigation second. Future cumulative impacts must be considered as well. Moreover, there is recognition in the Guidelines that many communities contain degraded shorelines; consequently master programs must include goals and policies that provide for restoration of such impaired ecological functions. (See Guidelines in your workbook.)

II. SMP Update Process

Planning Process: The SMP Update (Update) process consists of four substantive phases and two approval phases, one local and one at the Department of Ecology. The four substantive phases include several primary tasks and multiple subtasks and are divided as follows:

- **Phase 1:** Shoreline jurisdiction, public participation plan, and inventory
 - **Phase 2:** Shoreline analysis and characterization
 - **Phase 3:** Shoreline environment designation, policy and regulation
 - **Phase 4:** Cumulative impacts, restoration planning, revisiting phase 3
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- **Inventory and Analysis:** Phase 1 and most of Phase 2 are technical stages conducted by our consultant team using established scientific methodology. The inventory will compile all reasonable and available data regarding the shoreline including land use patterns, utility outfalls, information about critical areas, historic resources, priority habitats, and existing and potential public access sites. The analysis phase will describe the ecosystem-wide processes and ecological functions for all areas of shoreline jurisdiction through systematic application of landscape ecological principles.

The general idea is to work from the landscape or regional scale down to the reach scale, carefully summarizing the influences of climate, geology,

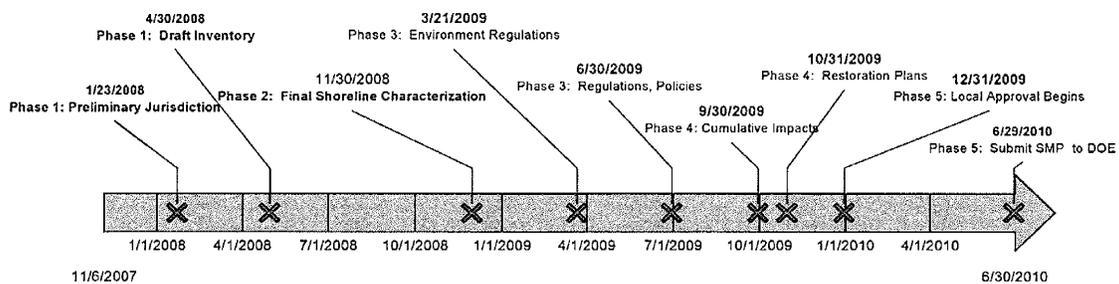
topography, soils, hydrology, land cover type, and land use. The next step is to identify management issues of concern such as those ecological processes that no longer function as they once did due to impacts of urbanization or specific inputs of pollution. To facilitate this analysis, the first step is to classify the shoreline into a number of distinct units or reaches and to detail the various ecological indicators by reach. The final step is roll up, summarize and map the various reach characteristics, giving special attention to those areas needing special protection or that possess opportunity for restoration.

- **Environment Designations:** Phase 3 is the planning step that takes the inventory and ecological characterization developed in Phase 1 and 2 and builds up appropriate environment designations that accurately reflect the character and resources of the shoreline reaches in question. The key components for such a decision are: (1) existing use patterns; (2) biological and physical characteristics of the shoreline; (3) goals and aspirations of the community as expressed through planning documents and public input; and, (4) Ecology criteria for six identified environments. Ecology provides a range of environments from Natural, where most functions are intact and protection is stressed, to High Intensity and Shoreline Residential, where uses take precedence over protection. In addition, the rules provide for tailored environment designations where better integration with comprehensive plans is the result.
- **Policies and Regulations:** Environment designations provide the underpinning for the type of policies and regulations that apply. For example, each SMP is build up of general policies and rules that apply to all environments and a specific set of policies and rules that are tailored to the specific needs of the particular environment in question. It is at this point that the Planning Commission begins its work in earnest. (See Task 3.3 in the Scope of Work for details.)
- **Cumulative Impact Analysis and Restoration Planning:** Phase 4 is devoted to long-term cumulative impact analysis and production of a restoration plan. The key objective here is to demonstrate there is no “net loss” of ecological functions based on the proposed provisions of the draft SMP. Such an investigation typically relies on a build-out analysis over a fixed period; the next SMP update is one such interval. Should impacts be revealed, the SMP must be adjusted to eliminate or substantially reduce them. The aim of the restoration planning process is to identify restoration sites where restoration is possible along with outlining policies, objectives, priorities and timelines sufficient to support shoreline restoration until the next update. There is a wide range of restoration approaches ranging from including restoration in the definition of water dependent uses (City of Port Townsend) to adopting regulatory and nonregulatory strategies (City of Everett).

- **Local Adoption:** Phase 5 is the local adoption process and includes multiple study sessions before the Planning Commission and the City Council. Included in this phase is a public hearing before the Planning Commission and possibly one before the City Council as well as specific public outreach events. Completion of the SEPA process would also occur early in Phase 5.
- **State Adoption:** Phase 6 is the state approval process. Generally this is an iterative process in which local government works directly with Ecology staff to address requested changes. By working closely with Ecology staff prior to this stage, we have every expectation that final adoption should be perfunctory, although we have heard of substantial delay in getting comments. The worst case outcome would be the need to circle back through the local approval process should Ecology find our SMP inconsistent with the policy and provisions of the Act and the state Guidelines.

Status and Timeline: Phase 1 is underway and a preliminary shoreline jurisdictional determination has been submitted to Ecology for review along with a draft public participation plan. The shoreline inventory is underway and will be completed by April 30.

The dates above represent the approximate due days for finishing key phases. The dates in bold type face represent those areas where Planning Commission involvement is critical.



Ecology Grant: This planning effort is partially supported by a \$175,000 grant from the Department of Ecology. Acceptance of the grant places specific reporting and fiduciary responsibilities on the City.

Consultants: Watershed Company is the prime consultant for this effort. Assisting Watershed is John Owens of Makers and EMC Research; they will support our robust public participation effort.

Public Participation Plan: The SMA mandates “reasonable efforts” to inform the public regarding the proposed Update and to actively encourage participation

by all persons and groups showing an interest in shoreline management programs. This requirement also applies to federal, tribal, state and local governments that have an interest in the shoreline areas covered by the local Master Program. As a consequence, staff and consultant have developed a robust public involvement effort that ensures the SMP update process is transparent, inclusive, effective and comprehensive. The outreach program is multifaceted and includes the following key components:

- **Public Opinion Survey:** With the assistance of EMC Research, the project team will conduct a statistically valid telephone survey of approximately 400 residents and 200 shoreline residents, yielding a margin of error of less than 5 percent. The purpose of the survey is to identify the public's general attitudes, priorities, and values relative to shoreline management and use. The results of the survey will be useful in guiding the staff and consultant team in preparing SMP provisions, communicating to the public on this topic and providing useful input to Planning Commission and City Council deliberations. (March – June 2008)
- **Formal Focus Group:** Qualitative information regarding public opinion will be collected by the consultant through at least one focus group meeting. Participants will be provided survey results prior to session. The session will probe issues identified in the survey for which more detailed explanation is necessary. One useful outcome will be to identify how different groups talk about the issues, what language they use and what reasoning they employ. (August 2008)
- **Open Houses:** The project team will conduct three open houses relatively early in the process at specific locations near Lake Washington/Mercer Slough, Lake Sammamish and Phantom Lake. (The outline of typical open house is outlined in the expanded version of the Public Participation Plan in your binder.) (Beginning summer 2008)
- **Shoreline Tour:** We are considering a possible boat tour of the Lake Washington shoreline, potentially as a substitute for the Lake Washington open house. The varied nature of the Lake Washington shoreline lends itself well to discussions of piers, bulkhead, storm water, invasive vegetation, setbacks, parks and other topics of major interest. Depending on cost and schedule, a smaller tour may be arranged for Planning Commission members. (Summer – fall 2008)
- **Planning Commission Open Houses:** In some cases, the project team may include open houses before particular Planning Commission meetings. In such cases, boards and information will outline the major points to be discussed at the meeting. (Mostly 2009)

- **Outreach Activities:** The project team will use a wide range of media to communicate project information to the public. This will include advertising in *It's Your City*, notification mailings and emails, and creation of a City website to support the planning effort. Specific personal outreach to affected groups will also be part of the focus. (Ongoing)

III. Roles

Planning Commission: Given the absence of a Citizen Advisory Committee for this proposal—the City Council agreed with staff that the range of issues, length of the effort and difficulty in recruiting members, militated against having such a committee—testimony before the Planning Commission will be one of the chief methods by which residents will provide input into the planning process. Likewise, in its role as primary reviewer of proposed Comprehensive Plan and Land Use Code changes, the Planning Commission will make recommendations to the City Council regarding the substance of the proposed update to the SMP. While this is a large, long-term planning effort, most of the work before the Planning Commission will occur during 2009 as the project team begins to bring you substantive proposals involving Comprehensive Plan language and changes to Chapter 20.25E of the Land Use Code. Given adoption of Critical Areas Ordinance in 2006, we believe many of the most challenging regulatory issues with respect to the shoreline have been resolved under that process, so we do not expect widespread opposition to the required Update. Beyond regulations, staff will aim to provide property owners with a wide selection of useful information about how to improve the conditions of our shorelines.

City Council: The City Council is local approval body for the updated SMP.

Department of Ecology: Under state law, the Department of Ecology is the final approval authority for updated Master Programs. Their role is limited to concluding whether or not the proposed changes are consistent with the policy and provisions of the Act and the state Guidelines. By working closely with Ecology staff we have every expectation that final adoption will go smoothly; however, it is not outside the realm of possibility that Ecology could refuse to approve the SMP without some changes, which naturally would have to cycle back through the local process.

IV. Next Steps

The consultant team is currently working on the shoreline inventory. The analysis and characterization will follow some months after that. In the meantime, the project team is working on implementing the outreach effort and preparing the range of topics to be addressed in the survey; the team from EMC Research will develop the specific questions. Staff proposes to return to the

Planning Commission sometime this summer to discuss the survey findings. We will schedule a fall meeting to role out the preliminary findings from the inventory and characterization.