City of Bellevue

DATE: September 23, 2009

TO: Chair Sheffels, Members of the Planning Commission

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

INTRODUCTION

At the September 23 study session, staff will present a revised strategy for moving forward with the required SMP Update. This revised approach will start with an introductory science briefing tonight by consultant Dan Nickels and be followed, over the next two months, by meetings that address a range of policy and scientific issues. These briefings are intended to provide the Planning Commission with a better understanding of the science supporting the requirements laid out in the State Guidelines and should provide a more substantial foundation for the Commission to complete the policy and regulatory development work of Phase 3. These special sessions will begin on October 14 with a presentation by Utilities Director, Denny Vidmar, on Bellevue's water quality program, and be followed by a number of presentations by academic and agency research scientists. We will wrap up this effort in November with an agency panel designed to help us understand salmon and habitat recovery efforts in the region and the role of updated SMPs in helping with that effort.

Following the scientific discussions, staff will initiate a dialogue on regulatory outcomes focused on those issues raised by the community to date: buffers, bulkheads, piers, vegetation management and nonconforming development. While unconventional in approach—discussion of regulatory options is generally preceded by the drafting of policy—staff believe a departure from the traditional planning methodology makes sense given the community's interest in discussing these issues, and the Commission's desire to better understand the intended regulatory outcomes as a mechanism to inform their policy discussions.

Other key components of this revised strategy include minor changes to the Commission's meeting format to better accommodate the science briefings, new methods to log and track Commission requests for information, supplements to the information already provided the Commission, and a more complete statement on the Council approved project scope from the Land Use Director.

And finally, we will enhance the Public Involvement effort to ensure, to the extent possible, that the process is perceived to be fair and open. To that end, staff will renew efforts to contact potentially affected interests, work with them to get to see the project through their eyes, generate a range of alternative solutions, and carefully articulate and clarify key issues.

BACKGROUND

Project Understanding

As previously outlined to the Commission, the scope of the SMP Update was designed and initiated by Council based on the following five key policy assumptions:

- The project scope was designed to achieve the most value for the budgeted project dollars by focusing the Update on three key components: shoreline restoration planning, public access, and potential use changes;
- The Update work program was designed and funded to build on the existing 2006 regulatory framework adopted to protect ecological functions on the shoreline, and to comply with the Ecology mandate.
- Any changes to the 2006 regulations would be necessarily limited, and would be based on experience gained from three years of permit review, significant changes in scientific understanding, changes in the environmental context that was identified during the shoreline characterization (Phase 2), and ideas advanced by the regulated community that would achieve the same outcome at less cost or impact on private property owners.
- The Planning Commission, in lieu of a Citizen Advisory Committee, was identified as the representative group of citizens best suited to consider and make policy recommendations on code changes for the SMP Update that was scheduled to extend over a three year project timeline; and,
- Ecology has the final say and must ultimately decide if the balance of interests provided in the Update adequately meets the intention of the Shoreline Management Act, and Ecology would be consulted throughout the process to avoid the creation of regulations that would not likely be approvable.

The Relationship of Science to the Guidelines and Policy Making

Science plays a very important part in preparing an SMP. For example, following RCW 90.58.100 (1), local governments are instructed to "utilize a systematic interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts and consider all plans, studies, inventories and systems of classification made or being made by federal, state, regional or local agencies . . . or by organizations dealing with pertinent shorelines of the state." This legal direction is implemented in the Guidelines in the requirement to incorporate "the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern."

The importance of science in supporting an updated SMP cannot be underestimated. We know, based on science assembled for the 2006 Critical Areas Update, and from countless studies on aquatic ecosystems, that our activities today along lake shorelines affect a number of physical, biological and chemical processes that create and maintain habitat, and therefore the species that live in our lakes. Similarly, development abutting shorelines affects riparian and littoral habitat structure, shading, and shoreline habitat conditions. Our actions also affect water and sediment quality. These impacts are discernable and measureable and suggest there is considerable risk in letting the current state of affairs continue unabated.

That said, scientists often disagree about causes and so while scientists can assist in formulating policy options and assessing risk, they cannot make the necessary value judgments that characterize the policy making process. Instead, policy makers need to act under scientific uncertainty and with the understanding that ecological health could deteriorate if their response is insufficiently protective. In this regard, Commission members must act as risk managers, carefully weighing the potential for further loss of ecological function against the intrusion on private property rights that regulation inevitably entails. Staff believes, as do the major actors in regional salmon and habitat recovery, that there is sufficient scientific information, even though that information may be imperfect, to support regulatory intervention.

To date, the Commission has been presented with a detailed summary of the science-based Analysis Report completed by our consultant team, the Watershed Company. (This document has been available online.) The Inventory and Analysis Report is a thorough review of the ecological and land use conditions on the shoreline, employs appropriate scientific methodology, and is based on a series of reputable, peer-reviewed scientific studies. As previously described, we have used this document to guide the environment designation process.

PROPOSED CHANGES TO WORK PLAN

Science Briefings

As introduced above, staff will be coordinating a series of science briefings starting tonight with a short presentation by the City's consultant, Dan Nickel. Dan's presentation will serve as an introduction to further briefings to come and will develop a simplified conceptual model that describes the changes to aquatic habitat brought about by urban development. This will be followed on October 14 by a presentation on Bellevue's approach to water quality management, presented by Utilities Director, Denny Vidmar. On October 28, Northwest Fisheries Science Center scientist, Tessa Francis, will discuss her research on the effects of urbanization on littoral habitats (shallow water habitat) and the use of science in the environmental policy process. Ms. Francis will be followed by other experts that will round out the discussion of science issues. We will wrap up with an agency and interest panel geared to understanding the state wide significance of Lake Washington and Lake Sammamish and their role in salmon recovery.

Focus on Regulatory Outcomes

Following the science briefings described above, staff will facilitate a discussion of regulatory outcomes in those areas with the largest impact on single-family property owners. This approach envisions sketching out a range of reasonable regulatory and incentive-based options to prevent a net loss of habitat function for a range of shoreline functions. No code language would be drafted at this point, but the Commission would be asked to establish clear direction as to what the regulation should encompass, the inherent trade-offs proposed, and the range of mitigation options that might be required. Later, these concept-level standards would be converted to code language and reviewed by the Commission.

The focus first will be on the existing shoreline regulations with respect to shoreline buffers/setbacks, shoreline stabilization (bulkheads), pier standards, shoreline vegetation management and nonconformity analysis. On balance, the majority of the controversy regarding the update process regionally and locally is centered on these issues. At present, those residents

expressing interest in Bellevue's Update are similarly focused on what happens in that narrow band of land near the shore.

In many ways, this resembles how the CAC for the critical areas update worked its way through the issues, focusing first on a broad discussion of outcomes and then delivering policy and regulatory language that implemented that defined course of action. Such an approach would similarly support outreach to the community who want to know how proposed changes might affect them and whose engagement could be harnessed positively now, rather than once the ordinance is fully drafted.

Modification of Meeting Agenda during Science Briefing Meetings

Special study session meetings related to legislative projects are intended to provide a time for the Planning Commission to hear from staff and to learn about and understand issues essential to development of a proposal that will ultimately be brought forward for a public hearing. To facilitate the delivery of the science information to the Commission, staff has coordinated with Chair Sheffels to modify the meeting format during the science briefings. Presentation of the science briefings will occur first, public comment will follow, and the Planning Commission will then begin their study session discussion. This approach will benefit the public by allowing them to learn from and then speak to the issues raised during the science presentations. This approach will benefit the Planning Commission by framing the issues to be presented and public feedback received on the scheduled topic.

Summary of Past Meetings and use of an "Issues List" to Track Requests for Information

In order to ensure that staff captures Commission requests for information, staff has created an active issues list that will be used to track requests made during each Planning Commission meeting. As the discussion unfolds, items that arise that are not on the agenda, requests for information, or questions that cannot be answered during the meeting will be added to the list. At the end of each meeting, staff will summarize the list to the Commission for their concurrence, and at subsequent meetings staff will provide a response or status update on issues contained on the list. This summary of issues will be provided at the September 23 meeting. Staff asks for the Commission to review the list and provide feedback at the October 14 meeting.

Information Record

For Commission and public information purposes, the staff has also created the following summary of information/materials that have been provided to the Commission thus far, and have identified materials currently in development. We ask that the Commission review the list below and provide feedback to staff on other information or materials that may be useful as we progress through the SMP Update process.

The materials listed below will be housed in a SMP Update Mobile Library that will be made available for review by the public and kept on hand for reference at all Planning Commission meetings. Extra copies of some essential documents will also be made available at meetings for audience/public to use during meetings so they can follow along and return the items to the library at the end of the meeting.

Original Binder Provided Included:

1) Current SMP from Comprehensive Plan (Source: Comp Plan).
2) Published WAC Guidelines (Source: WAC).
3) History of adoption of WAC Guidelines (Source: Ecology).
4) Summary of SMP (Source: Ecology).
5) Project scope with task/phase chart (Note: Contract which included project scope and stages approved by Council).

Supplemental Information Provided (To Date) Includes:

1) List of frequently asked questions and responded to those questions (also on the web).
2) Direct responses to the questions raised by the Commission.
3) Guide to "Waterfront Titles in the State of Washington".
4) Anacortes v. Futurewise summary.
5) Written correspondence with property interests.

Documentation Currently in Development or for Delivery at Future Meetings:

1) Complete shoreline inventory and characterization document (available online).
2) Draft shoreline environment maps.
3) Copies of other jurisdiction SMP's (suggest Redmond, Sammamish, Kirkland) .
4) To the extent practicable summarize WAC identifying what is required vs. what is optional. Use color scheme to facilitate reading.
5) Results of GIS study on affects of buffers/setbacks on single family residential. How many properties are affected broken down by geographic areas.
6) Use standard table format to compare/analyze policies to other jurisdictions. Currently being prepared by project consultant team.
7) BAS and risk analysis for CAO.
8) OHWM study, including correspondence between City and Ecology.
9) Land Use Planning for Salmon, Steelhead and Trout. Washington Department of Fish and Wildlife, Olympia, Washington.

Public Involvement Plan

Public engagement is also a primary component of the Update, and a public participation plan was required. The outline of the plan was reviewed by the Council and the detailed plan was submitted and reviewed by Ecology as a component of the Phase 1 Update work. The first part of this plan focused on creating an opportunity for interested parties to learn about the SMP Update, and to provide staff with information about their own views and experiences regarding shoreline issues. As work progresses, our emphasis will turn to eliciting ideas about how to better control the impacts associated with living on the shoreline.

To date, staff has conducted the multifaceted outreach to the community first outlined to the Commission in July, 2008. This included a scientifically valid public opinion survey, a mailed notification to neighborhood associations, creation of a web page, a formal focus group, a focused discussion with contractors and marina owners, a Lake Washington boat tour, creation of web blog, and an initial informational open house on May 21, 2009. This meeting was

preceded by a mailed notification to all lakeshore property owners and over a hundred residents attended. The public participation on this topic has already been significant, and is a testament to how effective it has been at reaching people and getting them involved in the Update process.

Moving forward, the plan calls for an additional open house preparatory to a public hearing on the draft SMP before the Commission. Staff also plans additional small-scale meetings with stakeholders and are actively pursuing meetings with recently formed or re-activated groups like BASS, West Lake Sammamish Association, and Save Lake Sammamish.

NEXT STEPS

In this memo, staff has described a range of strategies to reorient the process, better inform the Commission about the effects of urbanization on aquatic systems, track project issues and Commission requests, and continue our outreach to the public. Staff welcomes any feedback you may have on the information that has been described in this memorandum. We look forward to providing the commission with the appropriate background information at the science briefings over the next couple of months and are anxious to embark on a discussion of regulatory outcomes in the winter of this year. Additional detail will be provided regarding science topics scheduled for future Planning Commission meetings as presenters are confirmed.