

City of
Bellevue



Post Office Box 90012, Bellevue WA 98009-9012

September 18, 2012

Planning Commission
City of Bellevue
P.O. Box 90012
Bellevue WA 98009-9012

Dear Chair Carlson:

The Environmental Services Commission (ESC) appreciates the Planning Commission request to review and comment on the Phantom Lake Homeowners Association proposed actions for the Shoreline Restoration Plan. The ESC submits comments on two elements of the Shoreline Master Program update: 1) elements of the regulatory document that affect Utilities Department operations and 2) proposed Restoration Plan actions submitted by the Phantom Lake Homeowners Association.

Recommended modifications to the regulatory document are provided in Attachment 1.

The Shoreline Master Program edits are focused primarily on assuring technical feasibility and equitable costs for operating, repairing, and replacing Utilities infrastructure; promoting efficiencies in processes and permitting; and encouraging clarity for implementation.

Recommended modifications to the proposed Shoreline Restoration Plan actions are provided in Attachment 2.

The ESC reviewed the Phantom Lake Homeowners Association proposed actions with the desire to maintain the intent of their proposals, where possible. Should the Planning Commission choose to include these proposals in the Shoreline Restoration Plan, some of which are operational or policy oriented rather than actual restoration projects, the ESC recommends our modifications. We have provided background data and information to explain the reasons for the modifications.

Our intent is to continue working with the Phantom Lake Homeowners Association and other stakeholders in the community in an open and transparent process to obtain equitable solutions for all Utilities ratepayers and maintain compliance with all federal, state, and city requirements. We hope to reach a common understanding and make recommendations to Council that will address these on-going concerns.

We look forward to working together with you on these and other issues in the future.

Sincerely,

A handwritten signature in blue ink that reads "N. Otter for BH". The signature is written in a cursive style.

Brad Helland, PE
Chair, Environmental Services Commission

Cc: Jennifer Robertson, Deputy Mayor, Liaison to the Planning Commission
John Stokes, Councilmember, Liaison to the Environmental Services Commission
Kevin Wallace, Councilmember, Liaison to the Parks & Community Services Board
Lynn Robinson, Chair, Parks and Community Services Board

Attachment 1: Recommendations for Shoreline Master Program (Planning Commission Draft)

Regulations – July 5, 2012 PC DRAFT	http://www.bellevuewa.gov/pdf/PCD/July_5_2012_Planning_Commission_SM_P_Redraft_Strikedraft_Version.pdf	Comments
20.25E.010		
	<p>B.2.d Shoreline Restoration Element. This document shall does not be considered to contain regulations, but shall and should be used <u>only as a one reference or guidance document (in conjunction with other city documents)</u> for capital improvement planning by the City and other entities undertaking ecological shoreline restoration activities within the shoreline overlay district in Bellevue.</p>	<p>The Restoration Plan may not have all potential projects identified. It is not intended as an exhaustive menu of projects. If required to use the Restoration Plan, then potential mitigation sites with greater ecological value may not be allowed.</p>
	<p>C. 2. Setting lake levels. <u>Note: setting the Shoreline jurisdiction to specific lake levels will not change FEMA floodplain designations.</u></p>	<p>FEMA floodplain designations are federally determined, so will not be affected by local Shoreline Master Plan designations.</p>
	<p>C.2. Lake Washington OHW. The shoreline jurisdiction on Lake Washington shall be measured landward from elevation 25.10 <u>18.6'</u> (NAVD 88) on a horizontal plane.....</p>	<p>It is unclear where the 25.1' (NAVD 88) lake level for Lake Washington was obtained. The US Army Corp of Engineers sets maximum lake elevation at 22' (COE datum), which would translate to 18.6' (NAVD 88). Therefore, the elevation identified for Shoreline jurisdiction seems high.</p>
	<p>d. Phantom Lake. On Phantom Lake, the shoreline jurisdiction shall be measured landward from elevation 260.7' (NAVD 88) on a horizontal plane and to a point that results in the required dimension, or from that point identified in a site-specific OHWM determination completed by a qualified professional. <u>Note: elevation 260.7' (NAVD 88) is commonly exceeded and thus, is just a reference for the shoreline jurisdiction.</u></p>	<p>Available lake level data (attachment 1.1) show that lake levels frequently exceed 260.7 NAVD 88. Since 1972, for the years with lake elevation data, in 29 of the 29 years for which we have data, there have been higher levels than 260.7 NAVD 88 elevations. Therefore, the elevation should not be construed as a maximum high water level for Phantom Lake.</p>
Dimensional Requirements 20.25E.050		
ESC comment from 8/2	<p>Chart 20.25E.050.A <i>Shoreline Residential (SR) Shoreline Structure Setback</i> 25' <u>50'</u></p>	<p>Unless there is clear scientific justification, recommend maintaining current shoreline setbacks, rather than the proposed reduced setbacks. Reducing the structure setback from the shoreline will further constrain utilities services, essential for public health (drinking water, sewage, and stormwater), including lake line replacement and maintenance. The costs associated with these additional constraints could be substantial.</p>
General Requirements 20.25E.060		

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	<p>3.c.ii off-site mitigation Off-site mitigation for public projects shall only be permitted through one Special Shoreline Report, <u>providing sufficient detail for permit purposes.</u></p>	<p>There should be only one report required, either critical areas or shorelines, for off-site mitigation. In addition, implementing the off-site mitigation should not require additional reports beyond the initial project report, regular plan review should be sufficient at that point.</p>
	<p><u>1.2. Public Access.</u> All proposals <u>on public lands</u> for new development, reconstruction, replacement, or expansion of public transportation, utilities and parks projects <u>with greater than 20% footprint expansion</u>, that propose new uses or the reconstruction or replacement of structures supporting existing uses shall provide public access, or when appropriate, visual access in accordance with the public access requirements of the SMP, <u>where feasible.</u></p> <p><u>1.3. When not required</u> a. Applications for the following development or uses are not required to comply with paragraph I of this section i. Fully buried <u>or submerged utility uses or utility projects constructed on private lands within public easements, or when acquisition of public easements is required.</u></p>	<p>The changes in this section are substantial without linking those requirements to land-use triggers, similar to other development regulations. It is not feasible to require new public access just because a pump was changed out in a pump station. Previous requirements were based on a 20% expansion of the facility. Also, many utilities projects are constructed on private lands through easement agreements. Seeking or modifying easements on private lands to include this public access requirement is not likely to be successful. Also, facilities located within the lake, such as the sewer lake lines, should not have public access requirements. The exception for “fully buried” may not completely address this concern.</p>
<p>Specific Use Requirements 20.25E.070</p>	<p>http://www.bellevuewa.gov/pdf/PlanningCommission/ LUC%2020.25E.070 July 5 PC SMP Redraft.pdf</p>	
	<p>3.b.vi. Where a location ordinary high water mark is required, outfall should discharge waterward of the littoral zone (<u>shallow water area</u>) or further to protect nearshore habitat;</p>	<p>This sentence may be challenging for non-technical people. Perhaps clarifying littoral with a parenthetical explanation, such as shown?</p>
<p>Definitions 20.25E.280</p>		
	<p>“Aquaculture “means the process of growing, farming, or cultivating private sector cultured aquatic products...”</p> <p>“Aquatic Farmer” is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products...”</p>	<p>The definition seems to conflict with the allowed use language: <u>“Permit aquaculture uses through the shoreline conditional use process when sponsored or cosponsored by a public agency or federally recognized tribe developed as part of a fish recovery or similar restoration program, and provided that operations are conducted in a manner that mitigates impacts to the shoreline aquatic environment.”</u> The definitions need to be reviewed to reflect the intent of the regulations.</p>